







# The Commonwealth of Massachusetts

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Report of the  
Attorney General  
for Fiscal Year 2002

July 1, 2001 - June 30, 2002

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Publication Number 1024-286-720-11/03-4.95-Docuprint

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THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

THOMAS F. REILLY  
ATTORNEY GENERAL

ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108-1698

In accordance with the provisions of Section 11 of Chapter 12 of the Massachusetts General Laws, I hereby submit the Annual Report for the Office of the Attorney General. This Annual Report covers the period from July 1, 2001 to June 30, 2002.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "THOMAS F. REILLY".

Attorney General



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OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL, THOMAS F. REILLY  
FIRST ASSISTANT ATTORNEY GENERAL, DEAN RICHLIN

ANN ACKIL	ERIC CARRIKER	JAMES D.P. FARRELL
MICHELE ADELMAN (23)	EUGENIA CARRIS (52)	DANIEL FIELD
DOROTHY ANDERSON (30)	JAMES CARUSO, JR (49)	FREDA FISHMAN (37)
DAVID ANDREWS	PATRICK CASSIDY (14)	DOROTHY FOLEY (16) (55)
MARION ANTONUCCI	ALOKE CHAKRAVARTY	ELIZABETH ANN FOLEY
JAMES ARCUIN	NORA CHOROVER (14)	MARY FREELEY
MICHAEL ATLESON (52)	JOHN CHRISTIN, JR.	CYNTHIA GAGNE (26)
FREDERICK AUGENSTERN	LAWRENCE CHRISTOPHER (19)	RAFAEL GARCIA (39)
STEVEN BADDOUR (34)	JAMES CLARK	DANA GERSHENGORN (32)
EVA BADWAY	PETER CLARK	MARIANNE GEULA
LORI BALBONI (43)	STEPHEN CLARK	SALVATORE GIORLANDINO
THOMAS BARNICO	ALEXANDER COCHIS	I. ANDREW GOLDBERG
CHRISTOPHER BARRY-SMITH (17)	RICHARD COLE	CARYN GORDON (27)
JASON BARSHAK	JOANNA CONNOLLY (49)	RICHARD GORDON
R. DAVID BECK	ROSEMARY CONNOLLY	ELIOT GREEN
ANNETTE BENEDETTO	MARGRET COOKE	CATHERINE GREENE (40)
BARBARA BERENSON (57)	PATRICIA CORREA	HANNAH GREENWALD
MATTHEW BERGE	DAVID COSGROVE (5)	JOHN CROSSMAN
CRISPIN BIRNBAUM	ARLIE COSTINE-SCOTT (49)	DANIEL HAMMOND
NANCY BLOOMBERG	PIERCE CRAY	JOHN HANRAHAN (55)
WILLIAM BLOOMER	JOHN CRIMMINS	NANCY (BETSY) HARPER
EDWARD BOHLEN	JOHN CURSEADEN	KATHERINE HATCH
WILNER BORGELLA	WILLIAM DAGGETT (49)	JANICE HEALY
JENIFER BOSCO (37)	PAMELA DASHIELL	MICHAEL HERING (18)
JOHN BOWEN	GERALD D'AVOLIO JR.	HILARY HERSHMAN
MARTHA BOWER (36)	THOMAS DEE	MURIEL HERVEY (33)
JOHN BOWMAN	LINDA DELCASTILHO	SARA HINCHEY (3)
MATTHEW BROCK	BARBARA DILLON DESOUZA (14)	JOHN HITT
MATTHEW BUEHLER	STEPHEN DICK	BART HOLLANDER
RANJANA (Chand) BURKE	JOSEPH DRISCOLL (47)	PAMELA HUNT
STEVEN CALDER (14) (54)	ANNE EDWARDS (31)	MARSHA HUNTER
JOSEPH CALLANAN (10)	ANNE EDWARDS (12) (44)	CAROL IANCU
ROMEO CAMBA	KIRSTEN ENGEL	MATTHEW IRELAND
JESSE CAPLAN	BENJAMIN ERICSON (13)	DEEPA ISAC (7)
SANDRA CARDONE	BARBARA FAIN	MARCIA JACKSON (58)

## APPOINTMENTS

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MARIA HICKEY JACOBSON	WILLIAM MEADE	ROBERT QUINAN
JOCELYN JONES	PATRICIA MEDEIROS (8)	KARLEN REED
TIMOTHY JONES (1)	PAMELA MEISTER	RENE REYES (7) (56)
ROSALIND KABRHEL (14)	BETH MERACHNIK	WILLIAM REYNOLDS
MICHELLE KACZYNSKI	HOWARD MESHNICK	JULIANA RICE
STEPHANIE KAHN	NICHOLAS MESSURI	DEAN RICHLIN
JUDY KALMAN	JAMES MILKEY	ROBERT RITCHIE
GLENN KAPLAN	ALEXANDRA MOFFATT (53)	LENA ROBINSON (38)
JAMIE KATZ	PAUL MOLLOY	BEVERLY ROBY (40)
RONALD KEHOE (12)	BRIAN MONAHAN	ANTHONY RODRIGUEZ (48)
DAVID KERRIGAN	DAVID MONAHAN	JOSEPH ROGERS
KATHARINE KLUBOCK (21)	ALICE MOORE	DEIRDRE RONEY (9)
MARK KMETZ	MARK MULDOON	DEIRDRE ROSENBERG (49)
URSULA KNIGHT (4)	MARK MULLIGAN	JULIE ROSS
PAMELA KOGUT	DAVID NALVEN	AMY ROYAL
NICK KOSIAVELON	CATHRYN NEAVES	MARY RUPPERT (50)
SIU TIP LAM	AMY NECHTEM (41)	PETER RUSSELL
JUDITH LASTER	EILEEN O'BRIEN	FRANK RUSSO
ANDREW LATIMER (25)	JAMES O'BRIEN	PETER SACKS
KELLI LAWRENCE	THOMAS O'BRIEN	ERNEST SARASON
DIANE (Szafarowicz) LAWTON	JOHN O'LEARY	KURT SCHWARTZ
ANGELA LEE (45)	MARY O'NEIL	JEFFREY SHAPIRO
PATRICK LEE (3)	WILLIAM O'NEILL	MATTHEW SHEA
PETER LEIGHT	KRISTEN O'ROURKE	PATRICIA SIEFER (35)
GERARD, JR. LEONE (37)	DONNA PALERMINO	ADAM SIMMS
MADELINE LEONE	EMILY PARADISE	GINNY SINKEL
CAROLYN LONG	WILLIAM PARDEE	JOHANNA SORIS
STEPHANIE LOVELL	HOLLY PARKS	AMY SPECTOR
ANITA MAIETTA	MARGARET PARKS	CHRISTOPHER SPERANZO (7)
MARIA MAKREDES	MAITE PARSI	DAWN STOLFI STALENHOEF (20)
TIMOTHY MALEC (9)	M. JULIE PATINO	CAROL STARKEY
M. TONI MALONEY (28)	ROBERT PATTEN	DEBORAH STEENLAND
DAVID MARKS	PETER PAULOUSKY	CATHERINE SULLIVAN
LAURA MARLIN	SUSAN PAULSON	MARK SUTLIFF
STEPHEN MARSHALEK (9)	ANTHONY PENSKI	JAMES SWEENEY
LAURA MASLOW-ARMAND	MARY A. PHILLIPS	JOHN TALBOT
TINA MATSUOKA (7)	MARY B. PHILLIPS	ROSEMARY TARANTINO
DEAN MAZZONE	WILLIAM PORTER	NEIL TASSEL
TIMOTHY MCDONOUGH (42)	ANNE POWERS	DANAHTENCH
PHILIP MCGOVERN	STEPHEN PRUNIER (46)	LOUISA TERRELL (29)
CONSTANCE MCGRANE	CHRISTOPHER QUAYE	STEVEN THOMAS
TIMOTHY MCGUIRE (6)	JASON QUEENIN	LINDA TOMASELLI
MICHAEL MCNALLY (2)	KATHLEEN QUILL (15)	MARINI TORRES-BENSON

## APPOINTMENTS

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BRUCE TRAGER  
TRACEY TURNER (22)  
THOMAS ULFELDER (24)  
TERI WILLIAMS VALENTINE  
LINDA WAGNER  
TERESA WALSH  
PAMELA WECHSLER  
PETER WECHSLER  
RICHARD WEITZEL  
KAREN WELLS (44)  
KIMBERLY WEST (51)  
JAMES WHITCOMB  
DORIS WHITE  
JONATHAN WHITE  
JUDITH WHITING  
BETSY WHITTEY  
GEOFFREY WHY  
JESSICA COCCOLI WIELGUS (11)  
JANE WILLOUGHBY  
NATHANAEL WRIGHT  
CHARLES WYZANSKI  
HERMEN YEE  
JUDITH YOGMAN  
SHEILA YORK (7)  
KARLA ZARBO  
CATHERINE ZIEHL

## APPOINTMENTS

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<u>APPOINTMENT DATE</u>	<u>TERMINATION DATE</u>
(1) 07/09/01	(24) 07/02/01
(2) 07/16/01	(25) 07/06/01
(3) 07/30/01	(26) 07/13/01
(4) 08/13/01	(27) 07/20/01
(5) 08/29/01	(28) 08/03/01
(6) 09/02/01	(29) 08/21/01
(7) 09/04/01	(30) 08/24/01
(8) 09/10/01	(31) 09/03/01
(9) 09/17/01	(32) 09/04/01
(10) 10/29/01	(33) 09/10/01
(11) 11/05/01	(34) 09/28/01
(12) 11/13/01	(35) 10/12/01
(13) 11/19/01	(36) 10/19/01
(14) 12/03/01	(37) 11/02/01
(15) 01/02/02	(38) 11/03/01
(16) 01/28/02	(39) 11/09/01
(17) 02/04/02	(40) 11/16/01
(18) 02/28/02	(41) 11/21/01
(19) 03/04/02	(42) 12/19/01
(20) 03/11/02	(43) 12/28/01
(21) 03/25/02	(44) 01/18/02
(22) 04/01/02	(45) 01/25/02
(23) 04/16/02	(46) 02/01/02
	(47) 02/08/02
	(48) 03/08/02
	(49) 03/15/02
	(50) 03/22/02
	(51) 03/29/02
	(52) 05/17/02
	(53) 05/24/02
	(54) 05/31/02
	(55) 06/03/02
	(56) 06/07/02
	(57) 06/14/02
	(58) 06/28/02

# EXECUTIVE BUREAU

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GENERAL COUNSEL'S OFFICE

HUMAN RESOURCE MANAGEMENT OFFICE

EXTERNAL AFFAIRS OFFICE

INFORMATION TECHNOLOGY DIVISION

BUDGET OFFICE

OPERATIONS DIVISION

COMMUNICATIONS OFFICE



## **EXECUTIVE BUREAU**

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The Executive Bureau's primary function is to provide the Office with overall administration management, policy setting, staff supervision, and employee training. It is also charged with the responsibility of administering technical support to over 500 employees located throughout the Commonwealth. Additionally, the Executive Bureau is responsible for a number of specialized functions, including the coordination of legislative affairs, constituent relations, community outreach, and all communications, both internal and external.

The Office of the Attorney General is located in four areas in Massachusetts. The main office is located in Boston with three regional offices in Springfield, Worcester, and New Bedford. The Executive Bureau is designed to develop and maintain the agency's infrastructure, enabling all the Offices of the Attorney General to function productively and effectively for the benefit of the Commonwealth's citizens.

The Executive Bureau consists of the Office of the First Assistant, Attorney General, which oversees all legal matters and includes the Office of the General Counsel. The Chief of Staff is responsible for the day-to-day activities of the Attorney General, ensuring that the Attorney General's schedule reflects his priorities. The Chief of Staff is also responsible for the overall management of the following divisions — Human Resource Management, Budget, Information Technology, Operations, Support Services, and the Francis X. Bellotti Law Library.

In Fiscal Year 2002, the Executive Bureau included Dean Richlin, First Assistant Attorney General; Jeffrey Shapiro, Chief of Staff; Ellen Donaghey; Diane MacDonald; and Pasha Polihronidis.

Smooth operation of the Attorney General's Office is also reliant on the dedicated professionalism of the following staff members in the Bellotti Law Library and the Telecommunications Division: Karin Thurman, Library Director; Michael Ball; Catherine Douglas; Susan Lindsey; Raymond Manigault; and Denise McCartin.

## **GENERAL COUNSEL'S OFFICE**

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The name of the Office of the Legal Counsel changed to the General Counsel's Office in Fiscal Year 2002. It is still within the Office of the First Assistant, and the work remains the same. This Office provides recommendations on legal and policy matters to the Attorney General, the First Assistant Attorney General, and the Chief of Staff. Staff within the General Counsel's Office also advises all other staff members, both legal and nonlegal, in the Office of the Attorney General.

Specific areas of responsibility within this Office include advising on the Rules of Professional Conduct and the State Ethics Law; providing legal advice and assistance to the administrative staff within the Executive Bureau; coordinating the appointments of Special Assistant Attorneys General (SAAG); reviewing and approving legal services contracts for state agencies; reviewing and circulating petitions and notices from the Board of Bar Overseers; coordinating the officewide review of tax settlements between the Department of Revenue and individuals who have failed to pay taxes; retaining and managing the state's OUI notices to drinking establishments; monitoring the National Association of Attorneys General (NAAG) recommendations and submission of *amicus* briefs for the First Assistant and coordinating bureau responses; monitoring and reviewing NAAG's recommendations to join other Attorneys General throughout the country in letters of support of and/or opposition to proposed legislation or regulations; representing the Office of Campaign and Political Finance (OCPF) before the Superior Court; reviewing public records law appeals referred by the Supervisor of Public Records for enforcement action; and investigating open meeting law violations by state agencies.

Five attorneys staff the General Counsel's Office, each of whom is assigned specific and general areas of responsibility, with the support of one paralegal and one secretary. During Fiscal Year 2002, the staff in the General Counsel's Office included Pamela M. Dashiell, General Counsel; Deborah Steenland; Judy Zeprun Kalman, Director of the Attorney General Institute (AG Institute); Eileen Carey; Akiti Chandler; Christopher Speranzo; and Teri Williams Valentine.

## SIGNIFICANT CASE SUMMARIES

The General Counsel's Office manages all internal personnel matters in conjunction with the Human Resource Management Office. It is responsible for handling workers' compensation claims, union arbitrations and grievances, discrimination complaints, and disciplinary proceedings up to and including employee terminations. There were approximately 15 active personnel cases involving named individuals pending in Fiscal Year 2002.

On occasion, the General Counsel's Office will provide assistance to other bureaus with respect to cases involving litigation. Therefore, some members of the staff carry an active caseload of work unrelated to the core responsibilities of the General Counsel's Office.

## STATISTICAL SUMMARY

<i>Amicus</i> Briefs Received	29
NAAG Sign-on Requests Received	18
Legal Services Contracts Received	101
SAAG Appointments Made	58
SAAG Appointments Vacated	47
Public Records Enforcement Appeals Received	12
Public Records Requests Received	25
Open Meeting Law Complaints Received	3
OCPP Cases Received	17
Board of Bar Overseers/Tax Settlements Received	21
OUI Notices Received	2,699

## SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

Staff of the General Counsel's Office worked with the Human Resource Management Office to conduct training on the Attorney General's Anti-Discrimination and Sexual Harassment Policy. Members of the General Counsel's staff were involved in other cross-bureau initiatives, including the Children's Protection Project, the Employee Benefits Committee, officewide orientation, and the creation of a training module on the unauthorized practice of law for the Attorney General's hotline operators. A staff member also started drafting an officewide Policies and Procedure Manual.

The Professional Development Unit, established within the General Counsel's Office in Fiscal Year 2001, was renamed the Attorney General's Institute in Fiscal Year 2002. In keeping with the Attorney General's priority of ensuring that staff has access to the latest information and training available, the AG Institute provides continuing education to legal and nonlegal staff on a variety of topics. The

programs of the AG Institute are open to all employees within the Office of the Attorney General. During Fiscal Year 2002, the AG Institute offered 28 programs and brought in 12 Distinguished Lecturers.

## OUTREACH, EDUCATION, AND TRAINING

The staff of the General Counsel's Office provided training to state and local government agencies on open meeting law issues and public records law matters. During Fiscal Year 2002, staff members also served as panelists and speakers at NAAG seminars, Massachusetts Continuing Legal Education forums, and various legal programs offered across the country sponsored by the American, Boston, and Massachusetts Bar Associations.

## HUMAN RESOURCE MANAGEMENT OFFICE

The Human Resource Management Office is responsible for the recruitment and hiring of employees, benefits administration, performance appraisals, time and attendance record-keeping and officewide trainings. During Fiscal Year 2002, staff members included Diana LaRochelle, Director; Luna Bacon; James Chu; Joyce Delgado; Thomas Kopaczynski; Sandra Macdonald; Rosemary Miller; Meade Munroe; Joseph Shea; Marie Urciuoli; and Christine Wilson.

## SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

**Anti-Discrimination and Sexual Harassment Policy Training** The Office reissued the Anti-Discrimination and Sexual Harassment Policy in April 2002. After completing the task of training all members of the management and supervisory staff, the Office focused its attention on training each staff member in this important policy. During Fiscal Year 2002, 220 employees successfully completed this training. The Office remains committed to holding trainings on a regular basis so that all employees may appreciate the goal of having a workplace that is inclusive and diverse.

**Officewide Orientation Program** In conjunction with the Human Resource Management staff and the AG Institute, the First Assistant Attorney General and other senior managers developed for the first time an enhanced office-wide orientation program for new employees. This program was designed to introduce new staff to the structure and organization of the Office, and various policies and procedures that facilitated access to the Office's resources and

programs. Additionally, new employees had the opportunity to meet their colleagues from different bureaus and areas of operation, and learn more about the Office's mission and priorities. During Fiscal Year 2002, over 50 newly hired employees were invited and participated in this program.

**Office-Sponsored Bar Association Memberships** In addition to sponsoring membership with the Massachusetts and Boston Bar Associations, the Attorney General's Office's attorneys were again offered the opportunity to join one of the many minority and women's bar associations in the local or regional areas. This benefit was carried over from the previous year to further the Office's commitment to meeting the needs of attorneys' professional development and to encourage involvement with organizations made up of diverse members and experience.

**Enhanced Payroll System** All Human Resource Management and Payroll staff were trained in the Internet-based 8.0 release of the HR/CMS payroll system. During Fiscal Year 2002, the supervision of time and attendance was transitioned from HRM to the Payroll Coordinator in the Budget Office.

**Fellowship Program** Three fellows were hired in September 2001, based upon an application and interview process begun and completed in Fiscal Year 2002. Due to financial considerations, a decision was made to suspend the program for Fiscal Year 2003.

**Legal and Student Intern Program** The Attorney General's Office welcomed a total of 64 students for the 2001 Summer Intern Program: 25 students from six Massachusetts law schools and four out-of-state law schools; and 48 undergraduate students from over 33 colleges and universities across the country. The law students are afforded a unique opportunity to participate in a full-time, structured nine-week summer program which is unfunded, aimed at both utilizing the knowledge of the law students and giving them hands-on experience and training in the areas of law in the Commonwealth for which the Attorney General's Office is responsible.

Student interns volunteer at least 15 hours per week and are assigned in all seven bureaus across the Office. The term of their internships varies from student to student but often exceeds nine weeks.

Over the course of the fiscal year, the Office benefited greatly from the dedicated services of over 85 legal interns and 100 student interns. Additionally, the Assistant Attorneys General in the Office run clinical programs for students at three area law schools — Harvard Law School, Boston College Law School, and New England School of Law — throughout the year.

The Attorney General's Office actively participates annually in the Massachusetts Law School Consortium interview process to recruit summer legal interns. In addition to this valuable source of candidates, the Office coordinates and holds over a hundred interviews in late winter with students from numerous law schools for placement in the summer program.

Personnel Activity During Fiscal Year 2002, the Attorney General's Office hired 35 attorneys and 44 non-legal staff, for a total of 79. There were 103 employees who separated from the Office.

The Commonwealth offered an Early Retirement Incentive Program (E.R.I.P.) effective March 15, 2002 as a means to allow agencies to reduce staff sizes voluntarily. There were a total of 21 employees in the Office of the Attorney General who took advantage of the program.

Anticipating a funding reduction in its Fiscal Year 2003 budget, the Attorney General's Office was forced to take the unfortunate action of laying off 11 employees effective July 5, 2002.

## **EXTERNAL AFFAIRS OFFICE**

The External Affairs Office of the Executive Bureau is responsive to the public and the legislature. Its function is to serve as a liaison between the community, the legislature, and the Attorney General. External Affairs consists of the Office of Community Partnerships, Intergovernmental Affairs, Correspondence, and the Community Liaison.

The External Affairs Office included the following staff members: Jason Queenin, Director; Leah Green; Laura Marlin; Sally Ochine-Noel; Peter Russell; and Lyndsay Wolf.

## **OFFICE OF COMMUNITY PARTNERSHIPS**

Attorney General Reilly created the Office of Community Partnerships to work with Massachusetts' mayors, other urban leaders, and local town officials to address issues that relate to our cities and towns, particularly as they affect the health and safety of our children, environmental concerns, and housing issues. This Office acts as a direct liaison between the Attorney General's Office and the state's cities and towns.

In April 2001, the Office of Community Partnerships worked with the Massachusetts Municipal Association and the Massachusetts City Solicitors and Town Counsel Association in presenting the

Municipal Law Forum (previously mentioned in the Attorney General's priority list). This conference provided local leaders and town officials with a comprehensive update on relevant federal and state legislation, court cases, regulatory matters, and administrative decisions, as well as offered a unique opportunity to gather information, share perspectives, and raise important concerns and questions affecting Massachusetts' cities and towns.

## **INTERGOVERNMENTAL AFFAIRS**

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The Intergovernmental Affairs Office acts as the liaison to other state and federal government offices and officials, including the state legislature and members of the Massachusetts congressional delegation. Intergovernmental Affairs works with other bureaus to develop and file legislative proposals, and monitors legislation and budget items relevant to the Office of the Attorney General.

In Fiscal Year 2002, on behalf of the Office, the Intergovernmental Affairs Office drafted legislation and worked to update the Commonwealth's laws to provide greater protections for children, keep pace with technological changes in law enforcement, and protect elders from abuse and neglect. Also, shortly after the terrible events of September 11th, Attorney General Reilly and the Intergovernmental Affairs Office worked closely with the legislature to enact laws to ensure that the Commonwealth is prepared to combat acts of domestic terrorism if necessary.

Additionally, the Intergovernmental Affairs Office acts as the contact for members of the legislature and staff who have questions or need assistance from the Attorney General's Office on behalf of their constituents. In Fiscal Year 2002, the office handled hundreds of calls and written inquiries from members of the state legislature and congressional delegation pertaining to a wide range of matters.

## **COMMUNITY LIAISON**

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The Community Liaison is responsible for constituent services. The position was created as a resource for telephone requests or walk-ins from the community to obtain information for either internal or external assistance. In Fiscal Year 2002, approximately 2,700 telephone requests were fielded and resolved.

## **INFORMATION TECHNOLOGY DIVISION**

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The Information Technology Division (ITD) is responsible for the operation and maintenance of the Office of the Attorney General's computer network and related technical resources. The division maintains a wide area network (WAN) at One Ashburton Place, which provides connectivity from the

main office in Boston to the local area networks (LANs) that support staff located at 200 Portland Street, Boston; Springfield; Worcester; and New Bedford.

The mission of ITD is to provide hardware, software, and end-user assistance for all Office staff in all locations. The division's staff supports 17 servers, five routers, network communications equipment, and over 600 computer devices, including desktop PCs, notebook PCs, printers, scanners, and other peripheral equipment. During Fiscal Year 2002, ITD staff included Paula Durant, Director; Claudette Clement; Bruce Crosby; Jean Exantus; Christine Heneghan; Jack Ngan; Ronald Rossetti; Visakha Samaraweera; Thomas Smith; and Lisa Sullivan.

## SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

The Attorney General's Office remains committed to maintaining the quality of its technical resources. Realizing the importance of keeping pace with current technology, the division focused on replacing obsolete servers and server operating systems, replacing all outdated Windows NT platforms with Windows 2000, and then beginning the Office's mail system migration to Notes R5. Once that was well under way, all Novell file servers were upgraded to Netware 6. Each of these projects resulted in significant operating system efficiency, and Office staff are now able to take advantage of a number of messaging enhancements.

To address the continued demand for multi-media and presentation technology, the Office acquired presentation equipment and mobile computing equipment for each satellite location and procured licenses for litigation support software packages.

In Fiscal Year 2002, ITD also assisted in moving the Springfield Office to new office space, taking advantage of the opportunity to install updated cabling and network communications equipment. Desktop and printer upgrades continue but, thanks to previous efforts, on a much smaller scale.

In conjunction with the officewide improvements, ITD also responded to the needs of particular divisions. ITD developed and implemented a digital document storage solution for the Municipal Law Unit, utilizing the same equipment and software implemented last year for the Public Charities Division. The division also worked with members of the Victim Compensation and Assistance Division to install and implement equipment and applications software for their new claims tracking system and assisted the Environmental Protection Division with their implementation of a GIS system.

## OUTREACH, EDUCATION, AND TRAINING

The Information Technology Division provides end-user assistance both in scheduled sessions and upon request. Two help desks are maintained for user convenience, one at Ashburton Place and one at 200 Portland Street. User calls are received by the help desks for all types of issues. Reported hardware problems are referred to the next available Technical Support Specialist, and those requiring a particular expertise are directed to the ITD staff member best qualified to assist. In addition, orientation sessions are held for new employees and interns upon start of work.

Throughout the past year, ITD issued a variety of policy reminders, virus alerts, and technical bulletins to Office staff via e-mail. ITD staff also participated in the AG Institute's training seminars, presenting topics such as directory organization, e-mail etiquette, and WordPerfect tips.

## **BUDGET OFFICE**

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The Budget Office included the following staff members: Frank Velluto, Director; James Creedon; Kerisotellia Ford; Mary Jane Grace; Jennifer Hanly; Kristine Hill; Penny Michalski; Gail Sarno; and Lynette Smith. Support Services staff included William Coughlin, Manager; Stephen Cress; Timothy LeBlanc; Pier Minghetti; Nestor Morales, Jr.; David Scafati; and Harold Tafler.

The challenge to the Budget Office in Fiscal Year 2002 was to provide for the increasing needs of the Office while anticipating that Fiscal Year 2003 funding would be reduced due to the ongoing state budget crisis.

To meet these demands, during the second part of the fiscal year, the Budget Office recommended that most positions vacated through regular attrition and retirements associated with the Commonwealth's Early Retirement Incentive Program not be filled. Unfortunately, further reductions were necessitated by anticipated Fiscal Year 2003 cuts, and at the end of the year, the Office further reduced staffing through 11 layoffs. Although difficult, these decisions allowed the Office to absorb an almost 5% reduction in its main appropriation in the following year without further reductions.

Even with diminished resources, the Budget Office worked to fund costs associated with a number of high-profile cases and various cost-share agreements.

Additionally in Fiscal Year 2002, the Budget Office worked with staff from the Insurance Fraud Division to establish a new inter-governmental service agreement with the Social Security Administration

(SSA), administered through the Massachusetts Rehabilitation Commission. With funding provided by SSA, the Office hired two investigators to combat disability fraud and to ensure that disability benefits are awarded only to deserving individuals. To allow the project to go forward, the Budget Office worked with the State Comptroller's Office to arrive at a lower indirect cost rate.

In Fiscal Year 2002, the management and supervision of the time and attendance function was moved from the Human Resource Management (HRM) Office to the Budget Office. This change resulted in a streamlining of business processes to simplify the reporting procedure while also significantly reducing the wasteful use of paper. This has resulted in a more accurate reporting of employees' time and greater productivity for both Budget and HRM staff.

During Fiscal Year 2002, Budget staff processed over 12,000 payment voucher (PV) documents totaling \$18,456,943.

Among these totals were 2,427 PVs totaling \$621,331 that were issued to claimants who benefited from settlements made with various retailers and over 1 million in recovered wages.

## **OPERATIONS DIVISION**

The Operations Division is made up of staff members who are responsible for providing ancillary support to a multitude of initiatives and functions of the Office of the Attorney General. While working to support these functions during Fiscal Year 2002, the Operations Division enhanced the Office's security measures and emergency response capabilities in all five central and regional locations, conducting unannounced visits to ensure compliance.

In Fiscal Year 2002, the division's staff was composed of Gene Ring, Director; Chris Adams; and Kevin Nolan.

## **SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES**

In Fiscal Year 2002, the Operations Division completed a significant project that began in mid-Fiscal Year 2001. One of the Attorney General's priorities has been to upgrade the working environment in an effort to create a safer and more professional physical plant. Upgrading the Western Massachusetts Office was critical to that mission. The Operations Division developed a Request for Proposal for new space in which to move the western region staff. Working in conjunction with the Department of

Capital Asset Management, and under the direction of Gene Ring, the Attorney General's Office secured new space in a modern downtown Springfield building. This new space was built out to accommodate needs of a modern working environment and in a manner consistent with both staff safety and comfort. The Western Massachusetts Office is now among the best offices in the Commonwealth's inventory.

In the aftermath of September 11th, the Operations Division played a key role in upgrading and developing the Attorney General's Emergency Response Team. Operations reviewed previous plans, upgraded and modernized these plans, and reassigned personnel to critical duties according to lessons learned that fateful September. Among the many changes initiated were the establishment of emergency backpacks, strategically located throughout all offices. These backpacks contain supplies necessary in an emergency, along with emergency contact numbers and communication information. Operations secured access to several off-site backup operations centers so the Attorney General can conduct the Commonwealth's legal business during any emergency. Operations staff were also, on several occasions, first responders to suspected anthrax letters and established a protocol for safely dismantling potentially dangerous situations, while maintaining a smooth, uninterrupted operation of office functions.

With resources shrinking and the cost of doing business increasing, Operations continues to play a critical role in developing alternative methods of providing ancillary services to office staff. To this end, the Operations Division has examined current practices, identified ways in which to shave costs, and implemented common-sense measures. For example, equipment in need of repair and/or upgrading has been restored to good working order when it was determined to be more cost-effective than purchasing new. Another cost-saving measure was the creation of the Multi-Media Laboratory, which has proved a critical resource to the Office as well. The Multi-Media Lab has taken on the job of redeveloping trial exhibits on a larger scale, thus reducing the cost of reproduction to outside vendors. With only a moderate retooling of its technological needs, the Lab has advanced the Office's capacity to convince juries, consistently portray the Attorney General in the best possible manner, professionally enhance audio and video surveillance records, and develop high-quality visual aids for trials, press conferences, and special events. The Multi-Media Laboratory also has produced several local cable access shows in an effort to raise public awareness of services offered by the Attorney General's Office.

The Operations Division has completely revised the Office's equipment inventory methodology and adjusted asset reporting to bring staff up-to-date with the Comptroller's new reporting requirements. This has led to two independent auditors finding the Office of the Attorney General in compliance with state regulations.

Operations also coordinated the archiving of closed case files and the recalling of files from both the State Records Center and private vendors. This task involved training and oversight of all bureau

and division personnel involved in the maintenance of records, as well as the acquisition and distribution of record maintenance materials to all central and regional sites.

Other functions within the scope of Operations include vehicle maintenance, staff parking, acquisition and maintenance of emergency remote communication devices, responding to facility alarms, and general physical plant upkeep.

## **COMMUNICATIONS OFFICE**

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The Communications Office coordinates all media-related matters for the Attorney General's Office. The chief responsibility of the Communications Office is to serve as a centralized public voice for the agency. To that end, the Communications Officers work with executive staff and Bureau Chiefs to ensure that the Attorney General's priorities are reflected in all public statements and materials, including press releases, advisories, public statements, interviews, publications, the Attorney General's Web site ([www.ago.state.ma.us](http://www.ago.state.ma.us)), and other public appearances and events.

Addressing the needs both to improve communication within the agency and to establish protocols for communicating with the public, the Communications Office has implemented policies designed for dealing with the media, creating publications and brochures, and placing information on the Attorney General's Web site.

The Communications Office included Stephen Bilafer, Director; Marsha Cohen; Ann Donlan; Krista Genest; Sarah Nathan; Beth Stone; and Elissa Torto.

### **WEB SITE**

In existence since December 1999, the Office Web site continued to expand during Fiscal Year 2002. After more than a year in the redesign stages, the Office launched the revised Web site design in May 2002, thus allowing better visibility, ease of navigation, and compliance with accessibility guidelines. With the new design, the size of the site increased to nearly 5,000 pages and documents with approximately 60,000 visitors per month. Various areas of consumer protection, workplace rights, charities, environmental, and governmental issues were added to the site during the redesign as well as updated information for all other sections. In addition, current publications continued to be added to the Web site in PDF and, if possible, HTML formats (for accessibility compliance). This allowed the Office to cut down on printing and mailing costs, as many constituents were able to access publications

from their home computers. All press releases that are disseminated from this Office are now accessible on the site, as well as customized directions to all office locations, hotline numbers, and up-to-date information on employment opportunities and policies.

During Fiscal Year 2002, the Community Benefits Web Project was undertaken by the Office in an effort to improve the Community Benefits services already provided online to the citizens of the Commonwealth. The project included facilitating the electronic filing of annual reports, promoting public access to hospital and HMO Community Benefit Annual Reports, and providing tools to find and analyze these reports. The launch date of this project is expected in Fiscal Year 2003.



# BUSINESS AND LABOR PROTECTION BUREAU

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FAIR LABOR AND BUSINESS PRACTICES DIVISION  
INSURANCE AND UNEMPLOYMENT FRAUD DIVISION  
MEDICAID FRAUD CONTROL UNIT



## **BUSINESS AND LABOR PROTECTION BUREAU**

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The Business and Labor Protection Bureau, a bureau comprising approximately 100 lawyers, investigators, and administrative staff, maintaining responsibility for policing and prosecuting a variety of business crimes and related civil wrongs. The bureau consists of the Fair Labor and Business Practices Division, the Insurance and Unemployment Fraud Division, and the Medicaid Fraud Control Unit. The bureau's mission is to use its enforcement responsibility and public education initiatives to prosecute and deter fraud in the marketplace and to create a fair environment in which businesses and workers can participate.

The bureau's primary offices continue to be located at 200 Portland Street, Boston. The bureau is also represented in the Attorney General's regional offices in Springfield, Worcester, and New Bedford as well as its part-time satellite locations in Fall River and Pittsfield. Staff also regularly maintains office hours in Lawrence.

In Fiscal Year 2002, the bureau staff was made up of David Nalven, Bureau Chief; Jill Markowitz; David Marks; Connie McGrane; and Vicky Scolnick.

## **FAIR LABOR AND BUSINESS PRACTICES DIVISION**

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The Fair Labor and Business Practices Division (FLBP) is responsible for enforcing many of the Commonwealth's statutes and regulations concerning conduct in the workplace. As Fiscal Year 2002 witnessed a decline in the national and regional economies, and brought to the fore many business problems arising from a failure of corporate responsibility, the demands placed on FLBP increased dramatically. FLBP, through its telephone hotline, served as a workplace-law information center for both workers and businesses. FLBP investigators investigated tens of thousands of formal and informal complaints received through this hotline. Most of the problems raised in these complaints were resolved following FLBP inquiry, but many others required FLBP staff to pursue resolution through administrative, civil, and criminal processes.

Fair Labor and Business Practices is charged with enforcing the Massachusetts wage and hour laws, including the prevailing wage, minimum wage, nonpayment of wages, and overtime laws. FLBP is also charged with enforcing child labor laws. In addition, FLBP maintains responsibility for enforcement of laws concerning adherence to public contracting requirements. FLBP is also responsible for reviewing and ruling on applications by businesses for waivers from compliance with certain workplace laws.

During Fiscal Year 2002, FLBP staff included Dan Field, Division Chief; John Baker; Jeb Banks; Phil Beattie; Randy Berg; Bruce Bergman; Patricia Bopp; Jenifer Bosco; Cecile Byrne; Ronald Cabezas; Jay Clark; Mary Connolly; Susan Decker; Joseph Drzyzga; Mary Dullinger; Patrick Faherty; Robert Galvani; John Gatti; Lory Goldenberg-Tarrow; Paul Gordon; Michael Guarin; Richard Hartigan; Marsha Hunter; Jocelyn Jones; Barbara Kane; Patricia Kelleher; Noreen Kelly; Katharine Klubock; Robert Lamarre; Carolyn Long; Brian Macera; Jeffrey Mahoney; Anita Maietta; Mildred Markharn; Katherine Mulligan; Mario Paiva; Joan Parker; Iona Powell-Headley; Anne Powers; Greg Reutlinger; Mario Rosado; Elizabeth Rufo; Jennifer Ryan; Palmer Santucci; Steven Spencer; Bruce Trager; Steve Troiano; Theresa Ukleja; Theresa Vadala; Richard Yorra; and Karla Zarbo.

## SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

### OVERALL INVESTIGATORY ACTIVITY

Fair Labor and Business Practices received and investigated in excess of 4,300 formal complaints in Fiscal Year 2002. In many instances, FLBP's investigators recovered payment of full restitution or were provided with another appropriate remedy to the aggrieved employee without initiating the civil citation process or litigation. In many other cases, consistent with its law enforcement mission and approach, FLBP's staff employed its prosecution authority to pursue instances of unlawful conduct and regularly sought civil and criminal sanctions to be imposed on workplace-law offenders. Through these efforts, in the last fiscal year, FLBP recovered in excess of \$2.8 million in wages that were owed, but unpaid, to Massachusetts workers, as well as administrative and criminal penalties and costs.

### PREVAILING WAGE ENFORCEMENT

Fair Labor and Business Practices places a high priority on enforcement of the prevailing wage law. Well-documented complaints often form the basis for FLBP's most effective prosecutions and wage recoveries. FLBP inspectors also conduct unannounced site inspections at numerous public construction projects. During Fiscal Year 2002, FLBP investigators conducted over 120 public construction site inspections throughout the Commonwealth. This proactive approach not only assisted in the discovery of unlawful conduct, but also served the important public purpose of deterring workplace misconduct.

The following provides a representative sampling of prevailing wage cases undertaken by FLBP during Fiscal Year 2002:

- **Waste Management** In Fiscal Year 2002, Waste Management entered into Phase III of a multi-year settlement agreement in which it agreed to pay \$480,000 to approximately 1,400 temporary workers who performed work for the company. Failing to adhere to the requirements of the Massachusetts prevailing wage law, from 1998 to 2001, Waste Management of Massachusetts underpaid thousands of workers who served as trash haulers in approximately 60 cities and towns throughout the Commonwealth.
- **Allied/BFI** Trash haulers failed to pay prevailing wage to employees and temporary workers. \$475,000 settlement of temporary worker prevailing wage claims.
- **Diversified Contractors** Appeals Court rejected challenge to the constitutionality of the regulatory framework under which the Commonwealth establishes job classifications and upheld conviction against contractor who misclassified tradesmen in order to minimize wage payment obligation.
- **Tinker Electrical** Electrical contractor company failed to pay prevailing wage to apprentices on numerous public works jobs. Settlement of \$52,000 in restitution plus three-month debarment.
- **Midland Fire Protection** Settlement of prevailing wage claims involving multiple employees at five Central Massachusetts school projects. \$42,000 in restitution and penalty.
- **Ebacher Plumbing & Heating** Two sprinkler fitters were not paid the prevailing wage rate on several public works jobs. Settlement of \$41,000 restitution and a \$2,500 penalty.
- **Kneeland Plumbing and Heating** Plumbing and heating contractor failed to pay prevailing wage to apprentices on six public works jobs from 1997 to 1999. Settlement of \$36,000 in restitution, plus agreement not to bid on or perform public works jobs for five months.
- **Ferriera Construction** Settlement of civil citations for prevailing wage violations in Rehoboth. \$15,000 restitution and penalty imposed.

## PAYMENT OF WAGES ENFORCEMENT

Fair Labor and Business Practices is authorized to issue civil citations for violations of the wage and hour laws. A civil citation issued by FLBP can require the employer to comply with the law, pay restitution to the employees, and pay a civil penalty. FLBP has issued such citations to employers who fail to pay wages, overtime, the minimum wage, or prevailing wages, or who fail to provide certified payroll or other employment records required to be maintained and produced under Massachusetts law. Under the law, during Fiscal Year 2002, FLBP issued 186 civil citations for violations of the payment of wages and prevailing wage statutes.

The following provides a representative sampling of unpaid wage cases undertaken by FLBP during Fiscal Year 2002:

- **Electronic Data Systems** Superior Court decision affirming DALA decision upholding citation for failure to pay earned vacation wages to departing employee. The decision was also significant because it expressly recognized that the Attorney General's Office was entitled to deference in its interpretation of payment of wages statutes.
- **Commonwealth v. Richard Jacobson** Defendant defrauded customers/clients of the value of their antiques and other property, and failed to pay wages to an employee. Total fraud of \$78,000. Following Jacobson's guilty plea, he was sentenced to two and one half years probation and ordered to pay full restitution.
- **Ocean Edge Resort** Company took illegal housing deduction from more than sixty Jamaican immigrant staff. Settlement for \$10,000 in restitution, \$1,500 donation to Cape Cod immigrant support organization, and compliance going forward.
- **Bilafer Landscaping** Seven Brazilian immigrants were not paid for work performed. Bilafer was sentenced to six months in the House of Correction, suspended, and ordered to pay fines and restitution. He was also debarred from participating in state and municipal contracts for three years.
- **Dirigo Energy, Inc.** Failure to pay almost \$59,000 in wages to two engineering and maintenance employees. Settlement resulted in payment to the affected employees and an admission to a non-willful first civil offense.
- **Fishbones/Paul Masachi** Affirmance of civil citation imposed upon Plymouth restaurant charging non-payment of wages to numerous employees. \$15,000 restitution and penalty imposed.

- Orient Express/Jenny Woo The twice-convicted president of a Medford restaurant was cited for failure to pay wages to two chefs, both Chinese immigrants. Obtained restitution and penalty order.
- Ring Nursing Home Employees docked pay for one- to five-minute late punch-ins on time clock, resulting in unpaid wages of approximately \$3,800. Settlement resulted in restitution to 300 employees and an end to the practice of docking.

## PUBLIC CONTRACTS OVERSIGHT

The Attorney General's Office continued to provide a professional and accessible forum for the resolution of public construction bidding disputes, including investigating allegations of impropriety in connection with public works project bidding. The Attorney General's primary enforcement efforts in this area have been undertaken by FLBP's Public Contracts Unit. The tools employed by the Public Contracts Unit include adjudication of disputes, informal advice, and public education. In Fiscal Year 2002, the unit issued written decisions in 37 cases.

The unit also provided informal advice by telephone to the Commonwealth's awarding authorities and contractors who bid on public works projects. During Fiscal Year 2002, the Public Contracts Unit received thousands of written and telephone inquiries. The unit's telephone support has become an established resource for contractors and awarding authorities. Telephone assistance also has served as a significant prevention tool, often delivering the information necessary to prevent (or quickly remedy) a violation of the public bidding laws.

Fair Labor and Business Practices' public contracts enforcement efforts also included an educational component that provided public contracting participants with information regarding the public bidding laws. Among other things, the Attorney General's Office distributed the written public contracts bid protest decisions to the public construction community. In addition, FLBP's staff participated in educational programs that provided to the construction industry and their counsel the substantive and procedural information necessary to properly solicit or submit public works construction bids. Such proactive efforts have served many useful purposes, not the least of which has been to decrease the number of bid protests.

Following are two examples of significant public contract disputes resolved by FLBP in Fiscal Year 2002:

- Holyoke Charter School Decision issued requiring charter school to comply with public construction bidding laws, despite private nature of awarding entity, on grounds that the real parties in interest were public, the purpose was public, and funding was public.
- Waltham School Case Bid protest decision interpreting new legislation concerning relationship between general contractors and subcontractors. Decision upheld in challenge brought by disappointed contractor.

## CHILD LABOR

The Massachusetts child labor laws were established to protect workers under the age of 18. These workplace laws implicitly recognize the special vulnerabilities of young workers. The laws have allowed young workers to optimize their educational opportunities by restricting the number of hours minors of certain ages may work. In recognition of the increased rate of workplace injury among teenage workers, these laws also have helped shield minors from working on hazardous tasks and equipment. In addition, the permitting process, in which FLBP's specially trained child labor inspectors are closely involved, has created a structure for school superintendents, who issue work permits, to review the intended employment to ensure that it is safe, is consistent with the child labor laws, and serves the best interests of the minor.

During Fiscal Year 2002, FLBP inspectors investigated reports of child labor violations and conducted workplace site inspections, visiting many businesses where minors were employed, noting violations, and advising employers of their responsibilities and legal obligations under the child labor laws.

## WAIVERS AND INDUSTRIAL HOMEWORK

Fair Labor and Business Practices is charged by statute with the authority to waive certain requirements of the labor laws under certain conditions. During Fiscal Year 2002, FLBP processed hundreds of waiver applications and industrial homework certificate requests. Each request for a waiver was carefully evaluated before a determination was made to grant or deny the request. FLBP enforced the industrial homework laws (work performed for a company in the employee's home) by issuing permits to the employers and certificates for each employee, where applicable. FLBP also monitored these companies to ensure compliance with the minimum wage and overtime laws.

## STATISTICAL SUMMARY

Restitution Recovered	\$2,853,849
Hotline Calls	74,934
Formal Complaints Filed	4,321
Cases Closed	5,314
Civil Citations Issued	186
Public Contract Dispute Decisions	37

## OUTREACH, EDUCATION, AND TRAINING

Attorney General Reilly has long believed that public education is the first step in promoting compliance with workplace law. Accordingly, outreach to the employee and employer communities, and their unions, trade associations, counsel, and other advocates, has been an FLBP priority. One means to this end has been FLBP's telephone hotline, which has served as a workplace law information center for workers and businesses. In Fiscal Year 2002, the FLBP hotline received almost 75,000 inquiries.

The Immigrant Worker Outreach Project, launched in the prior fiscal year, continued to make headway. The Attorney General has long touted his support for fair treatment of immigrants in the workplace; this project is one way to help ensure that all workers in the Commonwealth receive an honest day's wages for an honest day's work. To that end, FLBP continued to pursue immigrant worker exploitation cases with vigor and expanded its translation efforts. In the past year, FLBP made over 100 presentations to immigrant advocacy groups and their constituents. The project continued to receive specific complaints of workplace abuse. The program also began to make presentations to employer groups in an effort to educate that group regarding their rights and responsibilities concerning immigrant employees.

Outreach was conducted in other areas as well. During Fiscal Year 2002, FLBP staff made more than 70 presentations to bar association and continuing legal education groups, professional organizations, trade associations, labor unions, and employee advocacy groups. These presentations ranged from nuts-and-bolts primers on the Commonwealth's wage and hour laws, and employee and employer rights and

responsibilities under these laws, to sophisticated presentations on such topics as worker classification under the prevailing wage law and the treatment of accrued vacation time as wages.

Fair Labor and Business Practices has also sought to educate relevant communities about wage and hour issues through the production and distribution of advisories and other publications, including a minimum wage and workplace rights poster designed by FLBP. FLBP also worked with the Commonwealth's Division of Occupational Safety on the compilation and distribution of a Compendium of Massachusetts Prevailing Wage Law, for use by awarding authorities, contractors, workers, and other participants in Massachusetts public works construction projects.

Fair Labor and Business Practices has endeavored, in the past year, to convey information to the community through the Workers' Rights section of the Attorney General's Web site. The FLBP portion of the Web site was established to contain basic summaries of Massachusetts workplace law, many of the AGO's workplace-related advisories and publications, and other resources. The Web site was accessed by callers to the hotline as well as the general public, thus achieving its goal of serving as another means of providing information to the people of the Commonwealth.

## **INSURANCE AND UNEMPLOYMENT FRAUD DIVISION**

The mission of the Insurance and Unemployment Fraud Division (IUFD) is to investigate and prosecute fraud against all types of insurers in Massachusetts, and against the Commonwealth's unemployment security system. IUFD prosecutes these crimes to protect Massachusetts businesses, consumers, and taxpayers from the hidden tax that fraud on these systems imposes.

IUFD's cases varied widely, including multi-million-dollar workers' compensation premium fraud cases, conspiracies by medical and legal professionals, fraud in auto repair businesses, staged motor vehicle accidents, inflated claims against homeowner's policies, cases involving claimants working while collecting workers' compensation benefits, and fraud by businesses on the Commonwealth's unemployment security fund. IUFD gave special attention to policing fraud by insurance industry insiders, including insurance agents, claims adjusters, and damage appraisers, whose frauds could have had an especially corrosive effect on public confidence in the insurance and unemployment compensation systems.

IUFD has received referrals from a number of sources. The largest source of referred cases was the Massachusetts Insurance Fraud Bureau, a non-governmental entity created by the Massachusetts Legislature and funded pursuant to statute indirectly by the Massachusetts insurance industry. In addition, IUFD received referrals from the Commonwealth's Human Resources Division, the Governor's Auto Theft

Strike Force, the Department of Industrial Accidents, the Workers' Compensation Rating and Inspection Bureau, the National Insurance Crime Bureau, and the Social Security Administration. IUFD also received complaints and referrals from concerned citizens, private attorneys, and court personnel. The wide range of referrals helped exemplify that IUFD's efforts in fighting insurance fraud are appreciated throughout the Commonwealth.

IUFD included the following staff members during Fiscal Year 2002: Eliot Green, Division Chief; Dave Andrews; Martha Bower; Jack Crimmins; John Curseaden; Marty Flood; Rafael Garcia; Julie Goodwin; Hannah Greenwald; John Hanrahan; Madeline Leone; Gloria Luk; Tim Malec; Michael McNally; Amy Nechtern; Shauna Neuhauser; John O'Leary; Lena Robinson; and John Talbot.

## SIGNIFICANT CASE SUMMARIES

The following are representative cases that were concluded in Fiscal Year 2002:

### FRAUD BY PROFESSIONALS

- Michael Bryant Conviction after five-week trial of former Ellis & Ellis associate charged with conspiracy to commit motor vehicle insurance fraud in connection with submission of false claims by his client, Jay Rosenfield, in 1994. Sentenced to two and one half years in the House of Correction, 12 months to serve. Service of the sentence was stayed, pending appeal. The defendant was subsequently temporarily suspended from the practice of law upon application of the Board of Bar Overseers.
- Andrew Budz Dentist submitted phony claim for equipment damage. The case was continued without a finding, and the defendant was ordered to pay full restitution and \$3,000 court costs.

### FRAUD BY INSIDERS

- Armand Arce Insurance agent who embezzled client funds by failing to apply proceeds of cashed-in policies to purchase of new policy, as promised, pleaded guilty and was sentenced to 60 days in the House of Correction, suspended for two years, and ordered to pay \$5,551 in restitution.

- John McKay Braintree insurance agent sold bogus policies to 70 personal chefs, resulting in fraud of more than \$35,000. Guilty plea on day of trial resulted in three years probation, 100 hours community service, full restitution, and a \$5,000 fine.
- Patricia Sullivan Claims adjuster for CNA Insurance Company caused six settlement checks to issue to herself and mailed to her home. Although defendant had agreed with this office to a guilty plea, the court rejected the plea and the case was continued without a finding for one year, and the defendant was ordered to pay restitution of \$3,435.
- Daniel Nissi Defendant acted as both insurance agent and co-insured (with wife Christine) where the same piece of \$12,000 jewelry was twice claimed as a loss. He falsely responded in a 1996 claim that he had not "ever sustained other theft losses." Court allowed over the objection of the Commonwealth both defendants' motions for pre-trial probation for a period of six months.

## OPERATION KODIAK

These cases, referred by the Governor's Auto Theft Strike Force, involved an undercover operation in which the Massachusetts State Police uncovered nine separate instances of an insured's motor vehicle reported stolen days after the same car had been given to an undercover officer. The insureds then collected claim settlements from various insurance carriers. Eleven individuals were indicted on 53 charges, which had caused seven insurance carriers to pay \$58,000 in fraudulent claims.

- Daniel J. Brunke The Kodiak ringleader, Brunke pleaded guilty and was sentenced to two consecutive two and one half year terms in the House of Correction and fined \$2,000. Brunke also was directed, as a condition of probation, to attend intensive Alcoholics Anonymous meetings for a year. There was no restitution ordered because the individual vehicle owners are being ordered to pay restitution.
- John Lacey The defendant pleaded guilty and was sentenced to six months in the House of Correction and ordered to pay \$8,661 restitution.
- Judith McNulty This Operation Kodiak claimant went to jury-waived trial after Commonwealth rejected court's request to dismiss several of the charges and consent to pre-trial probation on others. Not guilty on all counts.

- Suzanne Gabriel Gabriel's husband had earlier pleaded guilty in connection with same incident. Over Commonwealth's objection, the court imposed pre-trial probation.

## MOTOR VEHICLE INSURANCE FRAUD

- Peter Godek Phony motor vehicle damage claimant was convicted after jury trial of insurance fraud. Evidence showed that alleged vehicle roll-over occurred while vehicle was stationary. Godek was sentenced to a term of six months in the House of Correction, suspended. At the hearing, the judge refused to impose any restitution.
- Charles Barry Former State Trooper reported stolen an auto he had given to a girlfriend after the girlfriend broke up with him. Guilty plea resulted in three years probation, the first six months to be served in a community service organization, and full restitution.
- Gregory and Marzena Kolinski Phony hit-and-run claim. The case was continued without a finding for one year on day of trial, with \$15,000 restitution.
- Jocelyn Brown and Juanita Burke Burke, a Department of Employment and Training (DET) supervisor, falsely represented that Brown, her daughter, was employed by DET in connection with Brown's application for personal injury benefits following a motor vehicle accident. Both defendants admitted to sufficient facts on all of the pending charges; all charges were continued without a finding for one year. Brown was ordered to pay \$2,415 in restitution, and Burke was ordered to pay \$1,000 in court costs.

## WORKERS' COMPENSATION FRAUD

- Anne Brown Brown, a special needs child care worker, allegedly slipped and fell outside a client's residence. While collecting almost \$30,000 in disability benefits, as well as SSA benefits, Brown was licensed by the Commonwealth as a home-based day care provider and collected over \$11,000 in day care food reimbursement. During this time, Brown also worked under her maiden name at a business owned by her boyfriend, James Pratt, earning over \$17,000. Brown pleaded guilty, was sentenced to 10 years probation, and was ordered to pay \$24,800 restitution.

- James Pratt In connection with above-mentioned case, and pursuant to a cooperation/plea agreement, Pratt pleaded guilty to conspiracy charges and was sentenced to 18 months probation.
- Peter Nutile Nutile worked fulltime (while getting paid in his wife's name) for 12 of the 22 months that he collected benefits. He collected approximately \$22,000 illegally and attempted to steal an additional \$25,000 by settling his claim with the insurance company. Nutile pleaded guilty and was sentenced to seven years probation, with the first six months in home confinement on the bracelet program, and ordered to pay \$25,000 in restitution.
- Edelmiro Rivera Rivera defrauded the State's Human Resources Department of \$20,000, collecting total disability benefits while owning and operating a business. He pleaded guilty and was sentenced to six years probation and ordered to pay \$20,400 restitution.
- Jeffrey Oldread Defendant notified supervisor the day after he was fired for absenteeism that he had injured his back while working almost three weeks earlier. Defendant pleaded guilty and was sentenced to one year in the House of Correction, suspended for three years, 100 hours of community service, \$1,000 fine, and \$15,000 restitution.
- Stanley Davis Davis was working while collecting workers' compensation insurance. He was sentenced to 18 months in the House of Correction, suspended for three years, 150 hours of community service, and \$15,000 restitution.
- Robin Hayward Hayward was collecting total disability benefits while working full time. Guilty plea resulted in a sentence of nine months in the House of Correction, suspended for three years, probation, and restitution of \$11,849.
- Charles Vadnais Defendant submitted a claim stating that he was totally disabled and could not work, and then became a full-time employee of United Airlines. Vadnais admitted to sufficient facts, and the case was continued without a finding for two years, with a restitution order of \$9,885 and 200 hours of community service.
- Vernon Perry Using an assumed identity, Perry worked while collecting total disability benefits. Perry pleaded guilty and was sentenced to 18 months in the House of Correction, 90 days to be served, and restitution of \$4,968 to be paid to the Arbella Insurance Company.

## PROPERTY FRAUD

- John Pappalardo and James Buyck Two roommates filed claims within a year of each other for theft of identical jewelry items. Both Pappalardo and Buyck pleaded guilty on all counts. Pappalardo was sentenced to two and one half years in the House of Correction, one year committed, and ordered to pay \$5,900 in restitution. Buyck was sentenced to six months in the House of Correction, suspended for 18 months, with a \$1,000 fine.
- Denise Alessandrini Phony lost jewelry case. The case was continued without a finding for five years, plus full restitution.

## UNEMPLOYMENT COMPENSATION FRAUD

- George Jackson Upon being laid off, this construction worker began collecting unemployment benefits. Shortly thereafter, he was rehired, but continued to collect benefits for over five months. Jackson pleaded guilty and was sentenced to two years in the House of Correction, ninety days to serve, and ordered to pay \$8,000 in restitution.
- Nellie Anderson Inmate's sister cashed inmate's DET checks after inmate was incarcerated. The defendant pleaded guilty to all counts and was sentenced to six months in the House of Correction, suspended for two years, and ordered to pay full restitution.

## PERSONAL INJURY FRAUD

- Commonwealth v. Leno Mendes Defendant was injured while fleeing police but later filed a personal injury claim against his landlord, claiming the injury resulted from a slip and fall on landlord's steps. Defendant pleaded guilty and was sentenced to 10 months in the House of Correction and two years probation.
- Eduina Furtado Phony personal injury and bodily injury claims. Complaints issued in two courts. Both proceedings ended as continued without a finding and partial restitution orders.

## STATISTICAL SUMMARY

Referred Complaints	319
Investigations Opened	56
Investigations Closed w/o Prosecution	47
Cases Charged	44
Cases Disposed of	50
Cases Disposed, w/ Committed Prison Time	5
Restitution & Fines Recovered	\$276,000

## SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

During Fiscal Year 2002, IUFD initiated a program to combat motor vehicle insurance fraud by coordinating prosecutions with the Essex, Hampden, Middlesex, Suffolk, and Worcester District Attorneys' Offices. This enterprise, which was funded by the Division of Insurance, received referrals from the Insurance Fraud Bureau and emphasized fraud in the uninsured market. Some of the other crimes investigated included filing false property claims, making false statements to lower premiums, and using aliases to file false insurance claims. By the close of the fiscal year, numerous indictments were brought against seven people as a result of the referred cases.

IUFD also commenced a disability-fraud investigations program in Fiscal Year 2002, in conjunction with the United States Social Security Administration (SSA). Because a portion of social security disability benefits are paid for with state funds, this crime robs the Commonwealth's taxpayers twice: once as federal taxpayers and again as state taxpayers. Pursuant to the agreement between the AGO and the SSA, and with SSA funding, IUFD has hired two investigators to work closely with the SSA inspector general to combat social security disability fraud.

## OUTREACH, EDUCATION, AND TRAINING

Outreach to the community continued to be an integral part of IUFD's approach to serving the public. To that end, as part of a cross-bureau initiative, a series of Internet safety presentations were given to elementary and middle school students. Today's youth are using the Internet with increasing frequency, for both educational and recreational pursuits. Unfortunately, with the increase in Internet use by children, there has been a rise in the number of crimes committed by those who prey upon these children. The Internet safety presentations were designed to give children some of the tools they need to access the Internet in a safe and unaffected manner.

Additional outreach activities undertaken in Fiscal Year 2002 included the Abandoned Housing Initiative in the central part of the state. IUFD's involvement in this initiative stems in part from the fact that all too often abandoned structures are deliberately set on fire in order to collect insurance proceeds. Another means of combating arson-related fraud included IUFD representation on the Statewide Arson Task Force.

As in prior fiscal years, the IUFD staff uniformly attended continuing education classes on various subjects with high frequency. Identity fraud, a crime that has become more prevalent in this age of the Internet, is one area that IUFD personnel have focused on with the joint goals of prevention and prosecution. In a similar vein, staff members were involved in the AGO Privacy Committee. Attorneys were also active in the AGO Child Protection Project and with the Citizen Schools Program, a program that introduces inner-city students to the legal system through involvement with a mock trial.

## **MEDICAID FRAUD CONTROL UNIT**

The Medicaid Fraud Control Unit (MFCU) was established to protect the Massachusetts Medicaid program, which administered the provision of over \$5 billion of healthcare services to 700,000 indigent and disabled recipients in Massachusetts last year. In addition to prosecuting corporate and individual healthcare providers who commit crimes against the Medicaid program, MFCU is also responsible for prosecuting companies and individuals who abuse, neglect, or mistreat elderly and disabled residents of the Commonwealth's more than 550 long-term-care facilities, most of which are funded extensively, if not exclusively, by the Medicaid program.

Recognizing that Medicaid fraud is complex and costly to prosecute, the federal government has provided approximately 75% of the funding for MFCU's operation. Among its counterparts in other states across the nation, Attorney General Reilly's MFCU has been a leader in the number of successful criminal prosecutions and affirmative civil actions it has produced.

Consistent with its mission to protect the Medicaid program on a statewide basis, MFCU made extensive use of the Special Grand Jury sitting in Boston, as well as its statutory and regulatory discovery authority, to obtain indictments and convictions and to recover funds for the Medicaid program well in excess of its budget.

In the past fiscal year, a great deal of MFCU attention was focused on prescription drug pricing, from two very different perspectives: (1) manufacturer price inflation through average wholesale price (AWP) fraud, kickbacks, and other schemes; and (2) diversion of prescription drugs for non-medical use by physicians and other providers. Much of the work on the former approach is being undertaken with various MFCUs in other states and the United States Attorney's Office. MFCU has also continued to devote resources to its mission of protecting elders in nursing homes, through prosecution of abusers, investigation of financial fraud by nursing homes and elder care facilities, and coordination with DPH.

MFCU included the following staff members during Fiscal Year 2002: Nick Messuri, Division Chief; Ann Ackil; Kris Barrett; Al Brown; James Caruso; Eileen Casey; Peter Clark; Tanya Clement; John Curley; Steve Devlin; Joe Driscoll; Elaine Duffy; Catherine Fielding; Elizabeth Foley; Marianne Geula; Andree Lebel; Lai Ho Teresa Liu; Steve McCarthy; Anthony Megathlin; Mark Muldoon; Janice Paterna; Bob Patten; Shirley Rokosz; Susanne Snow; Christine Soloperto; and Bernie Vivolo.

## SIGNIFICANT CASE SUMMARIES

The following is a sample of cases undertaken by MFCU during Fiscal Year 2002.

### BILLING FRAUD

- **National Medical Care** Company engaged in upcoding, unbundling, billing for services not rendered, and kickbacks related to services provided to end-stage renal disease patients. Massachusetts' MFCU negotiated a \$7 million settlement for 48 states, with \$725,000 allotted to Massachusetts.
- **Caritas Medical Group** A \$191,000 civil settlement was reached with the United States Attorney's Office and MFCU to resolve a voluntary disclosure that certain physician services were upcoded and billed to Medicare and Medicaid.

- Greater Boston MRI Upcoding and improper record-keeping practices by four affiliated radiology groups resulted in an \$850,000 civil settlement and a corporate integrity agreement for prospective dealings.

## PHARMACEUTICAL PRICING

- Bayer Pharmaceutical Corp. Pharmaceutical manufacturer paid \$265,000 to the Massachusetts Medicaid program as part of a \$14 million multi-state agreement settling claims that Medicaid made excessive payments for injectable drugs. Bayer agreed to discontinue the practice of price inflating.
- TAP Pharmaceutical Cost-reporting fraud and kickback prosecution by United States Attorney's Office. MFCU developed Massachusetts' damages data. Criminal conviction and \$1.9 million restitution to the Massachusetts Medicaid program.

## DENTAL FRAUD

- Mohammad Sadatrafie Defendant billed over 100 services relating to 41 patients that were never administered, and patient files were altered to correspond to the fraudulent bills. Defendant pleaded guilty to filing false Medicaid claims and was sentenced to six months in the House of Correction. A parallel civil proceeding resulted in payment of restitution and fines in the amount of \$135,000.
- Robert Lew, DMD Co-owner of a dental group was charged with billing for services not rendered. He pleaded guilty and was sentenced to six months in the House of Correction and \$131,000 restitution.
- Asadi Golinaz, DDS Employee of Brockton dental group was charged with defrauding Medicaid. A \$75,000 civil settlement resulted.
- Simon Faynzilberg, DMD Upcoding and bundling by a Lynn dentist resulted in a \$40,000 civil settlement.

## ELDER SERVICES

- Joyce Godbout, Bellingham Elder Network Services and Blackstone Valley Bellingham adult day health center and its owner overstated the services provided and billed for services not rendered. Godbout's scheme netted \$200,000 over four years. Godbout pleaded guilty and was sentenced to two years in the House of Correction, suspended, and ordered to pay full restitution and a fine.

## MEDICAL EQUIPMENT AND SUPPLY COMPANIES

- Suffield Oxygen A \$54,000 civil settlement was effected, resolving allegations of this oxygen service company double billing and upcoding.
- KCI Corp Company manipulated billing codes to maximize reimbursement for nursing home beds and mattresses. \$170,000 restitution was made to Medicaid.
- Agawam Medical Equipment Co. In a case of overboiling, the company agreed to a \$375,000 settlement.

## PHARMACIES

- Robert Forte Osco Pharmacy intern devised a scheme to create phony prescriptions and steal street-value drugs, including Vicodin, Klonopin, and Xanax. Guilty plea on day of trial resulted in sentence of two and one half years in the House of Correction, 18 months to serve, the balance of the sentence to be suspended with probation and \$35,000 restitution.

## PHYSICIANS

- Loren Mimless Psychiatrist was convicted after jury trial of billing for services not rendered, and appeals were exhausted. He was sentenced to one year in the House of Correction.

## PSYCHOLOGISTS

- Emmar Morales Defendant worked as a clinical psychologist in Haverhill and Newburyport without a license, resulting in potential patient harm and Medicaid billing fraud. Guilty plea resulted in one year-house arrest, \$50,000 restitution, and 200 hours of community service.

## NURSING HOMES

- Ruth Rowe, CNA While working as a Certified Nursing Assistant at Seacoast Nursing Home in Gloucester, Rowe committed elder patient abuse by removing the narcotic agent from a demented patient's skin patch. Rowe pleaded guilty and was sentenced to six months in the House of Correction, suspended for two years, evaluation for drug treatment, and a lifetime ban on patient care work.
- Hebrew Rehabilitation Center This nursing home paid \$262,000 after voluntary disclosure of double billing Medicaid in per diem and the cost report for ancillary services.
- Daniel Brodeur Defendant embezzled personal funds of his uncle, an incapacitated nursing home resident. Guilty plea resulted in a suspended sentence, probation, and an order of restitution.
- Blaire House Nursing Home A 131-bed skilled nursing facility allegedly provided substandard and neglectful care to its residents. A civil settlement for \$41,000 was reached.
- Tenet MetroWest Healthcare Settlement was reached with nursing home's owner regarding allegations that the day habilitation program exaggerated disability levels of disabled clients to obtain higher Medicaid payments. \$100,000 restitution.

## HOME HEALTH

- Home Health VNA A \$35,000 settlement was reached with this Lawrence home care agency to resolve fraudulent activity of a nurse employee.

## STATISTICAL SUMMARY

Health Care Fraud Investigations	481
Formal Health Care Fraud Cases Opened	28
Formal Health Care Fraud Cases Closed	27
Patient Abuse Investigations	54
Formal Patient Abuse Cases Opened	15
Formal Patient Abuse Cases Closed	3
Civil Dispositions	17
Criminal Indictments	5
Criminal Dispositions	12
Restitution & Fines Recovered	\$5,834,223

## SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

During Fiscal Year 2002, MFCU brought both criminal and civil enforcement actions against hospitals, nursing home owners, pharmacies, physicians, dentists, home health care companies, billing intermediaries, and other medical providers. These enforcement actions focused on providers that misrepresented the services they provided to the Medicaid program, inflated the costs of their services, provided medically unnecessary services, or violated Medicaid's anti-kickback laws. As a result of its efforts, MFCU initiated and completed over 500 investigations, obtained indictments, secured convictions against corporate and individual defendants, and recovered in excess of \$5.8 million.

In addition, MFCU investigated physicians and psychiatrists who prescribed controlled substances for non-medical reasons or were not supported by medical diagnosis or necessity. MFCU investigated dentists and durable medical equipment companies for upcoding and unbundling their services. MFCU also looked at the area of pharmacy chains and pharmaceutical companies that overcharged the Medicaid program and inflated the costs of prescription drugs. In Fiscal Year 2002, MFCU also investigated the relationships between physicians, hospitals, and laboratories to detect illegal referrals, kickbacks, and conflicts with patient care.

### OUTREACH, EDUCATION, AND TRAINING

Outreach and education initiatives have served as integral components in maintaining MFCU's high level of efficiency. MFCU staff had regular dealings with the Department of Medical Assistance, which administers the Medicaid Program, in connection with a range of issues, including working conjointly with the Department of Public Health and the Pharmacy Board in an effort to ameliorate prescription drug abuse, including OxyContin. MFCU also worked with the Department of Mental Health in connection with patient abuse issues. In addition, staff were involved in a drug diversion task force with the Massachusetts State Police and the DEA. MFCU staff also were actively involved with the Boston office of the FBI on a healthcare fraud working group.

MFCU staff made numerous presentations on Medicaid fraud prevention and health law to outside groups, such as the Healthcare Corporate Compliance Conference, NASO Conference, Stonehill College, and the Medical Payment Systems Association. Staff also gave presentations on elder abuse and attended programs aimed at enhancing prosecution of this heinous crime.

MFCU staff continued to take advantage of the rich training opportunities available nationwide to healthcare law enforcement personnel, with several new investigators and lawyers attending multi-day trainings and conferences. Staff also continued to attend in-house programs that targeted such areas as improved courtroom techniques.



# COMMUNITY-BASED JUSTICE BUREAU

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VICTIM COMPENSATION AND ASSISTANCE DIVISION  
SAFE NEIGHBORHOOD INITIATIVE DIVISION



## COMMUNITY-BASED JUSTICE BUREAU

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The mission of the Community-Based Justice Bureau (CBJB) is to develop strategies, structure policies, and offer recommendations that prevent crime and promote the safety, health, and welfare of Massachusetts residents. The bureau focuses particular attention on the needs of children, crime victims, and victims of domestic violence, and reflects the community-based approach of Attorney General Tom Reilly.

The bureau develops and coordinates initiatives through training and education, publications and guidelines, programs, community outreach, and legislation. Working closely with law enforcement, state and local agencies, and community programs, CBJB concentrates its efforts in the areas of child protection, including juvenile justice, education and school safety, family violence, community safety, victim rights, and criminal justice policy. CBJB advises Attorney General Reilly on policy and legislative matters in these areas. The bureau also contains the Victim Compensation and Assistance Division and the Safe Neighborhood Initiative Division.

At the close of Fiscal Year 2002, CBJB prepared for a restructuring of the bureau to be implemented at the outset of Fiscal Year 2003. As part of the restructuring, CBJB will merge with the Criminal Bureau. As a result of this merger, the Criminal Bureau will contain the Safe Neighborhood Initiative Division and the Victim Compensation and Assistance Division as well as a new division, the "Criminal Justice Policy Division," which will include several staff members of CBJB. The foregoing restructuring was designed to more efficiently service criminal matters handled by the Attorney General's Office and reflects the Office's desire to enhance the professional development of CBJB attorneys and need for \$41,000 to accommodate the staff reduction caused by a budget crisis.

During Fiscal Year 2002, the bureau included the following staff members: Beth Merachnik, Chief; Barbara Berenson; Michelle Booth; Jean Fanning; Deepa Isac; Kristen Palma; Emily Paradise; Christina Ruccio; and Catherine Sullivan. The Director of the Victim Compensation and Assistance Division was Cheryl Watson, and the Chief of the Safe Neighborhood Initiative Division was Marcy Jackson.

### SIGNIFICANT CASE SUMMARIES

- Commonwealth v. Finase (Supreme Judicial Court) The bureau submitted an *amicus curiae* brief, arguing that a "no contact" order issued under a Chapter 209A restraining order law included

within it, as a component part, a "stay order." The Supreme Judicial Court agreed, stating that staying away was the most fundamental and important form of not contacting another person.

- **McLarey v. Danaipour** (First Circuit) The bureau submitted an amicus brief for this case in the First Circuit Court of Appeals. While the Attorney General's Office took no position on the underlying merits, the Office took the legal position that serious child sexual abuse may be evaluated using well-recognized indicia of credibility. The First Circuit reversed and adopted portions of the Office's brief.
- **Commonwealth v. Rivera** (Appeals Court) The bureau submitted a brief on direct appeal for the Business and Labor Protection Bureau. The basis of the appeal was the absence of a specific unanimity instruction in a case where a nursing assistant was convicted of assault and battery against an Alzheimer's patient. A decision in this case is pending.

## SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

### CHILD PROTECTION

**Children's Protection Project** Attorney General Tom Reilly's Children's Protection Project (CPP) reflects his commitment to addressing the needs of the children of the Commonwealth. The initiative, which draws on the expertise of staff in all bureaus and in all regional offices, is housed in CBJB. This cross-bureau initiative addresses issues concerning children, including violence prevention strategies, health care, legislation, education, juvenile justice and gang violence, child labor, tobacco prevention efforts, gun safety, and other topics that impact children. In addition, CPP serves as an avenue for bureaus within the Attorney General's Office to focus their resources and consider the issues that affect children.

During Fiscal Year 2002, the five CPP subcommittees — Legislation, Communication and Outreach, Education and Training, Community Service, and New Initiatives — received approval from the Executive Bureau for the majority of proposals developed. Subcommittees were charged with prioritizing the proposals and beginning implementation as deemed appropriate.

In December 2001, CPP sponsored a highly successful toy drive which provided approximately 350 toys to children for holiday celebrations at the Paul McLaughlin Center, the Union Hill

School in Worcester, the YWCA ARCH Program in Springfield, the Salvation Army in New Bedford, and the Washington School in Lynn.

**Youth Empowerment Skills (YES) Project** The YES Project, funded by a Byrne Memorial Grant awarded by the Executive Office of Public Safety (EOPS) and matching funds from the Office of the Attorney General, was established in October 2000 in response to a need for after-school and violence prevention programming identified by the Dorchester Safe Neighborhood Initiative. The project was created in partnership with the Daniel Marr Boys and Girls Club of Dorchester/Paul R. McLaughlin Youth Center, which hosts the YES Project. The goal of the project is to provide extensive training and educational enrichment opportunities to staff and youth at the McLaughlin Youth Center. Through the YES Project, Attorney General Tom Reilly seeks to provide teens with supervised, after-school activities and to offer at-risk youth a meaningful life skills education that helps them avoid risky behavior which may lead to school failure, substance abuse, involvement in the criminal justice system, and victimization by crime.

During this Fiscal Year, the Project Manager continued to develop and implement the YES Project curriculum. Programs included: (1) the continuation of a volunteer-based tutoring program with volunteers from the Attorney General's Office serving as weekly tutors for students; (2) teen workshops on, among other topics, Internet safety, healthy relationships, bullying, substance abuse, the rights of teens in the workplace, and consumer protection; (3) cultural awareness presentations on black history and the Islamic culture; (4) the development of a Gang Violence Prevention Video Curriculum; (5) a college preparation program that included college alumni panels, application workshops, financial aid information sessions, and tours to colleges and universities in New England, New York, and the Washington, D.C. area; (6) a community service project; (7) a holiday toy drive; (8) ballet and tap classes taught by Attorney General's Office volunteers; (9) a weeklong basketball camp with an educational curriculum focusing on geography, nutrition, and reading skills; and (10) staff trainings on topics including substance abuse and helping children cope with grief and loss. Bureau staff also completed and submitted the Year 3 YES Project grant application to EOPS and secured \$55,000 in funding.

**Citizen Schools** Bureau staff spearheaded the Attorney General's participation in the Citizen Schools mock trial apprenticeship program. Staff organized formation of an Attorney General's Office Team for students from the Wheatley School. Mock trials were held in December 2001 and May 2002, with office staff serving as jurors and witnesses.

**Citizen Schools Apprenticeship** Bureau staff developed and launched a new Attorney General's Office Citizen Schools Apprenticeship titled Beyond Stereotypes and Prejudice: How to Foster Understanding and Respect in Your School, a 10-week program held weekly at the Grover Cleveland Middle School in Dorchester. The program goal was to help students become aware of issues such as stereotypes, inclusion, and exclusion (in their own lives, at school, and in society), and to empower them through instruction in basic conflict resolution skills. As a final project, each student presented a poster that he or she created to educate others about important issues covered in the curriculum.

**MDAA Juvenile Justice Subcommittee** A bureau attorney participated in meetings of the Massachusetts District Attorneys Association's Juvenile Justice Subcommittee.

**Children's Justice Act Conference** Bureau attorneys attended the CJA Conference, Protecting Children in a Changing Society, held in Hyannis, MA.

**Equal Justice Partnership and EJP Working Group** Bureau staff participated in both the Equal Justice Partnership and the EJP Working Group.

**Norfolk County District Attorney's Children's Advocacy Center Advisory Board** A bureau member participated in meetings of the Norfolk County District Attorney's Children's Advocacy Center Advisory Board.

**Statewide Child Fatality Review Team** A bureau member participated in meetings of the Statewide Child Fatality Review Team, convened to review child deaths.

## DOMESTIC VIOLENCE

**Building Bridges of Support for Mothers Who Are Victims of Domestic Violence** Fiscal Year 2002 saw the successful completion of the Violence Against Women Act's (VAWA) grant-funded Building Bridges of Support for Mothers Who Are Victims of Domestic Violence Project. Under the grant, CBJB staff developed and implemented a training program for prosecutors, victim witness advocates, advocates from battered women's programs, and police officers on the special needs of battered women who have children.

The training, Building Bridges of Support for Mothers Who Are Victims of Violence, was divided into two stages. Phase I, completed in Fiscal Year 2001, consisted of two one-day regional

trainings, conducted in Plymouth and Northampton, for assistant district attorneys and victim witness advocates and covered a wide range of topics, including trauma, the victim's experience in the criminal justice system, the effects of domestic violence on children, criminal prosecution, and the role of public agencies. Phase II included two one-day regional training programs in Newton and Springfield for police officers and advocates from battered women's programs. CBJB staff also led and facilitated many of the trainings. Upon completion of the training component, staff assembled a domestic violence resource manual made up of the training materials, which was distributed statewide to district attorneys offices and domestic violence victim witness advocates.

**Protecting Elders from Domestic Abuse** A bureau member organized and moderated a panel presentation for the Annual Conference of the Massachusetts Association of Councils on Aging and Senior Center Directors held in Hyannis, MA. Titled **Protecting Elders from Domestic Abuse**, the panel addressed the issue of elders and domestic abuse and included staff of the Elders and Persons with Disabilities Unit of the Suffolk County District Attorney's Office and Minuteman Senior Services of Burlington, Massachusetts.

**Department of Justice Grant** Staff prepared and submitted a successful application to the Department of Justice for a Training Grant to Stop Abuse and Sexual Assault Against Older Individuals or Individuals with Disabilities Program. The program is titled **The Attorney General's Elder Abuse Project**.

**Governor's Commission on Domestic Violence** Bureau staff attended and participated in meetings of the Governor's Commission on Domestic Violence.

**MDAA Meetings** A bureau attorney participated in monthly meetings of the Massachusetts District Attorneys Association Domestic Violence Subcommittee.

**Employers Against Domestic Violence (EADV)** Bureau members attended an EADV conference and EADV meetings.

## SCHOOL SAFETY

**Safe Schools Newsletter** Bureau staff produced and distributed the Safe Schools Newsletter to school administrators, Police Chiefs, and District Attorneys throughout the state. Topics included

hate and harassment, civil rights injunctions, high-tech and computer crimes, protecting children from tobacco, legal updates, and legislation concerning issues applicable to schools.

**Safe Schools Task Force** CBJB staff and Public Protection Bureau staff convened the Task Force, which provides a forum for cross-bureau information-sharing on school safety trends. The Task Force discusses Attorney General's Office strategies to help address school violence and promote school safety.

**MATS (Multi-Agency Task Force)** Bureau members participated in a MATS team effort, along with Criminal Bureau staff, to address environmental health and safety issues in public schools in the Commonwealth. Staff worked to develop potential statewide training on issues of environmental concern for schools.

## SUBSTANCE ABUSE

**Attorney General's Statewide College and University Coalition on Underage and Problem Drinking** During Fiscal Year 2002, CBJB staff continued to lead the coalition on underage and problem drinking. The Coalition, made up of representatives from approximately 25 colleges and universities throughout the state, focused on developing creative solutions to the problem of underage and binge drinking on college and university campuses. The objective of the Coalition was to develop a cooperative agreement committing the colleges and universities to undertake specific prevention, intervention, and enforcement efforts concerning alcohol use and abuse on campus. The Coalition completed its draft agreement and presented it to their members, college health educators, campus police officers, and college presidents. The Coalition met regularly at the College of the Holy Cross in Worcester.

**Governor's Advisory Council on Substance Abuse** A bureau member attended monthly meetings of the Governor's Advisory Council on Substance Abuse.

**Mothers Against Drunk Driving** Bureau staff participated in Mothers Against Drunk Driving public policy meetings and advised on developing legislation to strengthen laws on motor vehicle homicide, repeat offenders, and implied consent.

**Emerging Drug Task Force** A bureau member participated in the Department of Public Health's Emerging Drug Task Force.

## HATE CRIMES

**Attorney General's Hate Crimes Task Force** CBJB staff actively participated in the Attorney General's Hate Crimes Task Force. Initiatives included developing and implementing a series of proposals focusing on education and training, publications, and community involvement. CBJB staff served as co-chair of the Subcommittee on Training, Education and Prevention.

**Massachusetts Hate Crimes Training Team** A CBJB staff person served as a member of this U.S. Department of Justice Initiative. The CBJB representative, as part of the team, conducted hate crimes training for local police departments.

## SPORTS VIOLENCE

**Massachusetts Alliance for the Promotion of Sportsmanship** CBJB collaborated with the Criminal Bureau in establishing the Massachusetts Alliance for the Promotion of Sportsmanship (MAPS), co-convened by Attorney General Reilly and then-Suffolk County District Attorney Ralph Martin. Established in response to several well-publicized incidents of sports violence, MAPS sought to advance collaborative initiatives in an effort to generate a culture in Massachusetts that fosters healthy attitudes and responsible conduct by athletes, coaches, officials, and spectators of all ages. MAPS membership included law enforcement, professional sports teams, college athletes, and high school sports programs.

## LEGISLATION

**Legislative Activity** Bureau staff members drafted, reviewed, and commented on legislative proposals. Some examples include:

- participating on AGO/MDAA Committee to amend child abuse and neglect mandated reporting law to include clergy;

- recommending amendments to pending legislative proposals concerning the victim compensation statute; and
- assessing the constitutionality of *An Act Relative to Profits from Crime* and considering whether the Attorney General's Office would file an *amicus* brief in support of the legislation in response to a Request for Advisory Opinion from the SJC.

**Employers Against Domestic Violence (EADV)** A bureau attorney participated in meetings of the EADV Employment Law Subcommittee.

**MDAA Meetings** A bureau attorney participated in monthly meetings of the Massachusetts District Attorneys Association's Legislative Subcommittee to review and prioritize pending or proposed criminal justice legislation.

**Commonwealth Attorneys Appellate Action Project (CAAAP)** Bureau attorneys attended regular meetings of the Commonwealth Attorneys Appellate Action Project.

## OUTREACH, EDUCATION, AND TRAINING

### INTERNET SAFETY

CJB staff, in conjunction with staff of the Criminal Bureau and the regional offices, conducted trainings on Internet safety throughout the Commonwealth. Among them were presentations at local schools, public hearings, and an Internet expo. Staff also distributed *The Internet, Your Child, And You: What Every Parent Should Know* and *Internet Safety: Advice from Kids Who Have Faced Danger Online* to schools serving students in grades 4-8. Over 350,000 copies of the guides were provided. In addition, staff conducted trainings on search and seizure in schools.

### HATE CRIMES

CJB staff, in collaboration with the Civil Rights Division, developed promotional materials and substantive content for a training series titled A Prerequisite for Safe Schools: Protecting Students from Harassment and Hate Crimes. Staff developed and facilitated workshops on such topics as: establishing a comprehensive civil rights program, identifying and responding to harassment and hate crimes, fostering

a school climate that appreciates diversity, and creating successful partnerships between schools, law enforcement, and the community. The first two regional trainings were held in Fiscal Year 2001. The third and fourth regional conferences were held in Fiscal Year 2002 for Norfolk and Worcester counties, and for Bristol County, Plymouth County, and the Cape and Islands.

## DOMESTIC VIOLENCE

CBJB staff spoke on domestic violence and the criminal justice process to various groups, including the Boston College Law School Domestic Violence Advocacy Project. Bureau members and regional office staff also conducted trainings on teen dating violence for McLaughlin Youth Center staff and SCORE coordinators and on college campuses.

## CRISIS RESPONSE TRAINING

Bureau staff served as members of the Cambridge Health Alliance Community Crisis Response Team, which provides crisis response in the aftermath of trauma to communities in crisis.

## INTERNAL WORKING GROUPS

Attorney General Tom Reilly places a high priority on creating a strong, cohesive workforce. In an effort to eliminate barriers and encourage collaboration among the several bureaus and divisions within the Office, the Attorney General created a number of internal working groups. CBJB staff participated in several of those groups, among them, the Children's Protection Project, the Post-September 11 Working Group, the Education Working Group, and the Hate Crimes Task Force.

## PUBLICATIONS

- Safe Schools Newsletter Staff drafted articles for and coordinated development of the Fall 2001 edition of the *Safe Schools Newsletter*. The newsletter included articles on hate and harassment, civil rights injunctions, high-tech and computer crimes, protecting children from tobacco, and recent case law. The newsletter was distributed to an audience of over three thousand, including school administrators (public and private), Police Chiefs, and District Attorneys.

- Teen Dating Violence & Restraining Orders: The Law and Safety Planning CBJB staff continued to distribute copies of the teen dating violence brochure.
- The Internet, Your Child, And You: What Every Parent Should Know and Internet Safety: Advice from Kids Who Have Faced Danger Online Bureau staff continued to distribute copies of parent and student guides.

## **VICTIM COMPENSATION AND ASSISTANCE DIVISION**

The Victim Compensation and Assistance Division (VCAD) is responsible for administering G.L. c. 258C and the Commonwealth's Victim Compensation Fund. The division provides financial compensation, referrals, and other assistance to victims of violent crime. Most significantly, division staff assist qualifying victims and their families in paying for out-of-pocket crime-related expenses, including medical and counseling expenses, lost wages, funeral and burial expenses, and loss of support. Since 1994, the division has assumed legal and administrative responsibility for receiving, investigating, and determining all compensation claims in accordance with the requirements of G.L. c. 258C. Previously, compensation claims were determined through a litigation-based process in the district courts. In addition, in Fiscal Year 2002, the Office of the Attorney General assumed responsibility for the payment of claims, taking over that responsibility from the State Treasurer's Office.

During Fiscal Year 2002, division staff included Cheryl Watson, Division Director; Sandra Clark; James Clarkin; Jessica Cruzatti-Flavius; Gael DeCologero; Erica Johnson; Julie King; Deikel Lynch; Laura Michalski; Lori Murphy; Priscilla Russell; James Sinagra; and Jennifer Wilson.

## STATISTICAL SUMMARY

CLAIM INFORMATION	TOTAL # CLAIMS
New Claims Received	1,742
New Claims Opened	1,211
Supplemental Claims Opened	798
Administrative Review	35
Decision Affirmed	30
Modified or Reversed	5
Homicide Claims	287
Judicial Review	4

In Fiscal Year 2002, the Victim Compensation and Assistance Division received 1,742 new claims, an increase of 15% over the 1,509 claims received during the last fiscal year. This increase is likely due to the division's ongoing efforts to increase public awareness of the program. During this fiscal year, the division received 287 homicide claims compared to 194 in Fiscal Year 2001 and 140 during Fiscal Year 2000. Of the 287 homicide claims, 37 were terrorism claims submitted by family members of victims of the September 11, 2001 attacks.

## EXPENDITURES

During this fiscal year, the total compensation awarded to victims was \$3,236,518. Approximately \$2.1 million came from state funds, and the remainder came from federal funds. This marks an approximate 9% increase over awards issued last year. This is the seventh consecutive year in which the division had adequate funding to support expenditures.

## PROGRAM EVALUATION

An applicant survey is sent to each claimant with decisional letters. The division received 374 completed surveys from claimants. Surveys were overwhelmingly positive, with more than 89% of claimants agreeing or strongly agreeing that applications are easy to complete, that division staff treated them with courtesy and respect, that their questions were answered, and that they were satisfied with the decision on their claim and the amount of time it took for processing.

## SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

### GRANT ACTIVITY

The division applied for and received an annual grant for Fiscal Year 2002 from the Department of Justice through Victims of Crime Act funds in the amount of \$546,000. These funds are used to supplement state payments of awards made directly to crime victims. A small portion of the grant is used for program administration.

The division also applied for and received a grant for Fiscal Year 2002 from the Executive Office of Public Safety through the Department of Justice, Violence Against Women Act funds in the amount of \$48,930. These funds were used to hire an investigator/victim advocate to provide specialized services to domestic violence, sexual assault, and stalking victims who seek compensation and services from the division.

### FEDERAL REPORTING REQUIREMENTS

The division submitted an annual Certification Report and quarterly reports to the Department of Justice, Office for Victims of Crime for the Victims of Crime Act. In addition, the division submitted quarterly reports to the Executive Office of Public Safety for the grant under the Violence Against Women Act, referenced above. Finally, an annual Performance Report and Grant Application were submitted requesting continuation funding from the Department of Justice through the Victims of Crime Act.

## LEGISLATIVE ACTIVITY

A bill was filed jointly with the Massachusetts Office for Victim Assistance to amend the Victim Compensation law. The bill would expand certain benefits under G.L. c. 258C and assist crime victims in paying for the most frequently requested crime-related costs. The Attorney General's Office continues to seek passage of this bill. Staff promoted the legislation at a legislative breakfast sponsored by the Massachusetts Office for Victim Assistance and the Bristol County District Attorney.

## AUTOMATION

During Fiscal Year 2002, the division successfully implemented a new software program to expedite the processing of compensation claims. All case-related data from the previous program was converted and installed into the new program.

## POSTER DISTRIBUTION

Staff created a new Victim Compensation poster to help increase public awareness of the program. Using posters created by art students at the Paul McLaughlin Youth Center, division staff developed a calendar in recognition of Victim Rights Week and distributed it at the annual Victim Rights Conference at the Copley Plaza Hotel in April.

## OUTREACH, EDUCATION, AND TRAINING

Outreach and training about the program and its benefits remained a primary focus for Fiscal Year 2002. Victim Compensation training was provided to:

- Wayside Youth Services, Department of Social Services, CHERRS Program at Dorchester House, Victim of Crime Act subgrantees for the Massachusetts Office for Victim Assistance;
- Help for Abused Women and Children, U. Mass Medical Center, Codman Square Health Center, Greater Boston Legal Services, Springfield District Attorney's Victim Witness Assistance Program, Northampton District Attorney's Victim Witness Assistance Program;

- SAFEPLAN Domestic Violence Advocates, Middlesex District Attorney's Victim Witness Assistance Program;
- University of Mass., U. Mass Medical Center Domestic Violence Program, Worcester Youth Guidance Center, Casa Myrna Vasquez, Wayside Community Roundtable; and
- Building Bridges of Support for Moms workshop series sponsored by the Attorney General's Office.

In addition, division staff participated in a number of initiatives as the result of the September 11 terrorism attacks. A staff member worked one week at Pier 94 for the New York Victim Compensation Program assisting victims and their families who came seeking help. Staff participated in regular conference calls with the Department of Justice, the National Association of Crime Victim Compensation Boards (NACVCB), and victim service professionals from the other affected states. Staff played a key role in assisting the Department of Justice with drafting regulations to provide a federal compensation program.

Division staff also participated in training events sponsored by Representative Martin Meehan, Senator Ted Kennedy, the FBI, the U.S. Attorney's Office, the Massachusetts Office for Victim Assistance and the NACVCB. In addition, division staff attended the annual National Organization for Victim Assistance Conference in Nashville, TN, the NACVCB regional conference in Annapolis, MD and the NACVCB national conference in Washington, D.C.

During this Fiscal Year, staff represented the Attorney General at the following meetings:

- Governor's Domestic Violence Commission, Faith Communities Working Group, a subcommittee of the Governor's Domestic Violence Commission;
- Advisory Committee of the Norfolk County District Attorney's Children's Advocacy Center, Victim Witness Assistance Board;
- Massachusetts Hate Crime Training Team sponsored by the Department of Justice, Cambridge Health Alliance Community Crisis Response Team, Boston Area Sexual Assault Coalition, and the Executive Office of Public Safety's Sexual Assault Evidence Collection Kit Advisory Committee.

## SAFE NEIGHBORHOOD INITIATIVE DIVISION

The first Safe Neighborhood Initiative (SNI) was established in Dorchester in February 1993 by the Office of the Attorney General, the Suffolk County District Attorney's Office, the Mayor's Office of the City of Boston, and the Boston Police Department. Based on the premise that no single group alone can

solve all problems faced by a community, the SNI provides a framework for community residents and service providers to work collaboratively with law enforcement and government agencies to identify and address priority public safety and quality of life issues in the community. The SNI model has been replicated in a number of communities across the Commonwealth — each using a somewhat different approach. Some are law enforcement driven while others are community driven, but all are organized around the three core principles of coordinated law enforcement; neighborhood revitalization; and prevention, intervention, and treatment. During Fiscal Year 2002, the Office of the Attorney General participated in active SNI partnerships in Taunton, Brockton, the Montague Village of Turner Falls, and the Grove Hall and Dorchester neighborhoods of Boston. Beyond establishing and participating in the various community SNIs, the SNI Division embarks on numerous innovative community-based activities to prevent crime and promote public safety, many of which are described in the sections below.

During Fiscal Year 2002, the division staff included Marcy Jackson, Division Chief; Linda DelCastilho; Ellen Frank; Jennifer Grigoraitis; Katherine Hatch; Tim McDonough; Christina Ruccio; Lenell Silva; and Neil Tassel. Assistant Attorney General Julie Ross, assigned to the High Tech and Computer Crime Division in the Criminal Bureau, was assigned to a four-month rotation from February through May 2002 prosecuting Grove Hall SNI cases in the Roxbury District Court.

## SIGNIFICANT CASE SUMMARIES

The SNI's Community Prosecution Program is critical to its coordinated law enforcement component. SNI attorneys at the Superior and District Court levels continued to expand on their traditional roles as prosecutors by continuing their close work with community partners. SNI prosecutors attended community meetings, participated in special events, and responded to inquiries from law enforcement, residents, and social service agencies. As a result of their direct community involvement, the SNI attorneys were able to assess issues of the most importance to the community and help determine how resources from the Attorney General's Office could best be utilized to address those concerns. In addition, the Assistant Attorneys General developed joint initiatives with other law enforcement agencies, including federal law enforcement authorities for enhanced federal prosecutions. The Assistant Attorneys General for the Dorchester and Grove Hall SNIs prosecute major felonies in Superior Court consisting primarily of repeat drug offenders, large-scale drug seizures, armed robberies, armed career criminals, and firearm offenses. The Assistant Attorney General for the Montague SNI prosecutes primarily narcotics and domestic violence violations. Examples of case summaries are included below.

- **Commonwealth v. Archie Lane** (Dorchester) This defendant was the subject of investigation and a search warrant at his home and was subsequently indicted for Possession with Intent to Distribute Cocaine. While on bail, he was seen asleep in a running car by officers who knew him to be unlicensed. When he stepped out of the car, he dropped five bags of crack to the ground. The defendant was tried for his second arrest first. He was convicted and sentenced to five years in Cedar Junction. He then pleaded guilty on the original case.
- **Commonwealth v. Neftali Hebron** (Dorchester) This defendant was on probation in Lynn for OUI when he was arrested in Dorchester for trafficking cocaine. In that arrest, the police followed up on a tip that cocaine was going to be delivered to a particular house at a specific time. The defendant arrived and was questioned and consented to a search; cocaine was found in his pocket. The prosecutor appeared in Lynn several times for probation surrender hearings. Eventually, the defendant surrendered in Lynn, pleaded guilty, and received a three-to-five year sentence.
- **Commonwealth v. Martin White** (Dorchester) This defendant broke into a vacant home during the daytime. When the family returned home, they encountered the defendant in the house. A violent fight ensued, and the defendant was stabbed and subdued and held for the police. He accused the family of attacking him and dragging him into the home. He pleaded guilty and was sentenced to four to five years.
- **Commonwealth v. Kelo Gibbs** (Grove Hall) A woman was making food deliveries by car, and while stopped at a red light, she was approached by two males, one of whom pulled her from her car and jumped into the driver's seat and drove off. Police officers spotted the victim's car within minutes of the incident, and the car fled from the marked cruiser. The car disappeared for a few minutes. Thereafter, different officers saw the defendant getting out of the parked car carrying take-out food from the victim's employer's establishment and carrying a black bag belonging to the victim. The victim identified the defendant at a show-up as the man who had pulled her from her car. The defendant's beeper was found inside the victim's car, and he also resisted arrest when the officers initially attempted to place him into custody. The second suspect involved in the carjacking was identified by the police, but the victim could not identify him. The defendant was indicted on charges of Carjacking, Assault & Battery, and Resisting Arrest. After trial, a superior court jury found the defendant guilty on all three counts. He was sentenced to six to seven years in state prison on the Carjacking count with two years probation from and after on the Assault & Battery and a guilty was filed on the Resisting charge. The defendant was on probation for robbery at the time that he committed this offense, and the judge sentenced him to concurrent house time on the probation case. Jury found defendant guilty on all three counts.

- **Commonwealth v. Lolita Hopkins** (Grove Hall) Police officers stopped a car for failing to use turn signals and discovered that the operator was operating after his license was suspended. In running warrant checks on the remaining three occupants, the officers found that the defendant had two outstanding warrants. As the officers were arresting her, she revealed that she had crack in her pocket — “two halves, a bunch of rocks, and some weed.” The officers recovered a tube with two bags of crack; another bag with many smaller rocks, all individually wrapped; and marijuana. The estimated weight was between 14 and 27 grams. The defendant’s boyfriend (the driver) had \$304 on him — 27 five-dollar bills, six 10-dollar bills, 89 one-dollar bills and one 20-dollar bill. The money was in several pockets and in many different bundles. The defendant pled guilty to a reduced charge of Possession of Class D with Intent to Distribute. She was sentenced to two to three years in state prison. The Possession of Class B resulted in a guilty-filed and the School Zone count was dismissed.
- **Commonwealth v. Mark Gibson** (Grove Hall) The police responded to a call for a motor vehicle accident, and when they arrived at the scene, both vehicles were unoccupied. A witness reported that one driver (defendant) got out of his car and robbed the driver of the second vehicle and then chased him away. The witness also reported that the defendant had a female passenger with him. Within minutes, other officers spotted the defendant and approached him. He became very violent and knocked one officer to the ground and hit another. The victim, meanwhile, had run home and called 911; he was directed by the dispatcher to return to the scene. Upon doing so, the victim identified the defendant as the man who had robbed him at knifepoint of his ATM card and \$12-\$15 cash. The defendant was found with a knife, the victim’s ATM card, and \$13 cash. At the police district station, the defendant’s mother had reported that about 12:00 a.m., she had noticed her car keys missing and that her son had left the house at 11:30 p.m. and did not have her permission to use her car. She reported that her son had taken her car in the past and she had told him repeatedly not to take the car. The defendant had only a learner’s permit and was not licensed to drive. The defendant was charged with Armed Robbery, Leaving the Scene of an Accident, Unlicensed Operation of a Motor Vehicle, and two counts of Assault & Battery on a Police Officer. The defendant had no adult record and two dismissals in the juvenile system. This case was resolved in district court with the defendant pleading guilty and sentenced as follows: Larceny from Person, 18 months in the House of Correction, committed; Leaving the Scene of an Accident, guilty-filed; Unlicensed Operation of a Motor Vehicle, guilty-filed; Assault and Battery on a Police Officer, guilty, 18 months in the House of Correction committed; Assault and Battery on a Police Officer, guilty-two years probation from and after the committed sentence with several conditions (psychopharmacological evaluation, compliance with medications

regimen, anger management program, individual therapy as recommended, and completion of grade 12).

- Commonwealth v. William F. Bauch III (Montague) The defendant was charged with Home Invasion, Entering at Night for Felony Placing Person in Fear, and Assault and Battery. The case was resolved in district court with the defendant pleading guilty to Entering at Night for Felony charge. The defendant was sentenced to one and one half years in the House of Correction: six months to serve, the balance suspended for two years.

## SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

### BROCKTON SNI

The Brockton SNI Advisory Council continued to meet regularly to address the needs and concerns of the community related to crime prevention and neighborhood revitalization. The Attorney General's Office supports the position of the SNI Community Liaison who is based in the Plymouth County District Attorney's Office and works closely with that office and the Assistant District Attorney community prosecutor. One of the primary focuses and successes of the Brockton SNI this year was an effort to increase resident participation in the SNI. Toward this end, the SNI Community Liaison built numerous relationships with a variety of organizations and agencies in the community and also publicized meetings through the Community Calendar Website, Brockton Cable Access Channel, and the monthly distribution of fliers.

The Brockton SNI continues to generate a network of support from other community agencies. During the past year the SNI established working relationships with the Brockton Fire Department, Brockton Neighbors United, Brockton Area Multi-Services, Board of Health, Assessor's Office, and the Registry of Deeds. The SNI also continues to work closely with law enforcement agencies in an effort to fight crime within the Brockton community.

The Brockton SNI collaborated with community service providers on a number of initiatives this year. Some examples are listed below.

Vacant Lot/Neighborhood Clean-Up This initiative was established by the Attorney General's Office in collaboration with the Plymouth County District Attorney's Office, the Mayor's Office,

the Office of Community Corrections, and the Department of Public Works. The purpose of the project is to provide community residents with assistance by cleaning vacant lots and neighborhood streets to help revitalize the neighborhoods. The project is ongoing and residents are encouraged to report concerns about properties and requests for clean-ups.

**Landlord Notification** This initiative was established by the Plymouth County District Attorney's Office and was revived this year with assistance from the SNI Community Liaison who renewed working relationships with the Assessor's Office, the Registry of Deeds, the Board of Health, the Brockton Fire Department, and the Southeastern Housing Court. Research is conducted and landlord notifications are processed for the signature of the District Attorney and the Chief of Police. The notification provides information to landlords whose tenants have been charged with drug-related crimes. They are provided with information that may assist them in understanding their obligations to maintain the safety of their properties as well as information about the eviction process. This is an ongoing project that targets selected cases from the daily drug arrests.

**Community Police Leadership Council** The SNI Community Liaison participated in monthly meetings that focus on law enforcement crime prevention within the community.

**Brockton Neighbors United Council** The SNI Community Liaison participated in monthly meetings focused on the prevention of child abuse and neglect by strengthening families and building community by establishing links with various resources in the community.

**Partnership for Safer Communities** The SNI Community Liaison participated in National Night Out Against Crime Committee meetings and attends this event every year. An information booth is set up for the distribution of informational fliers and brochures.

**Local Law Enforcement Block Grant Council** The SNI Community Liaison participated in monthly meetings by planning crime prevention initiatives in the community.

## DORCHESTER SNI

The Dorchester SNI continued to focus on issues that have consistently plagued the area — truancy, youth violence, and a lack of job opportunities and training. The Boston Police Department targeted truancy while other subcontracted programs provided opportunities for young people to effectively use the time when they are not in school by offering recreational, educational, and job training programs.

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Additionally, community workers were actively involved with the Cape Verdean and Vietnamese communities, working to assess and address their needs. Through the work of a Cape Verdean youth outreach worker, funded by the SNI and contracted through the Bowdoin Street Health Center, the SNI has been able to address issues facing Cape Verdean youth. Issues of violence, family, education, health, and job opportunities are regularly addressed in the Cape Verdean youth groups which meet weekly. The Dorchester SNI has also created a strong network of support for other emerging immigrant groups, children who witness violence, and the local business community.

The Dorchester SNI Advisory Council continued to meet regularly to identify the most pressing needs of the Dorchester SNI community. The Office of the Attorney General, through a grant from the Executive Office of Public Safety, completed its eighth year of funding for subcontracted programs in the Dorchester SNI, offering assistance to law enforcement efforts as well as prevention efforts that included numerous enrichment, educational, and recreational programming for children, youth, and adults. Offered through direct service providers in the community, programming included youth safe haven activities at the Dorchester Youth Collaborative, educational and training programs for local small business owners, police training, and clinical assistance for children who witnessed violence. To complement the ongoing activities of the Dorchester SNI, the Advisory Council awarded mini-grants for three projects during Fiscal Year 2002.

**Media Literacy Project** A new program administered by Boston Community Centers in partnership with the Log School Settlement House. The Project provided primarily Cape Verdean youth ages 13-16 with a structured after-school environment and training in radio, television, and music production.

**My First Job** A program of Dorchester Youth Collaborative provided information to teens at the Grover Cleveland Middle School on the availability of summer jobs and assisted the youth with the job application process. My First Job Program also provided youth with job readiness counseling and training prior to beginning their summer positions.

**African Dance and Art Collaborative** Administered by the Bowdoin Street Health Center, the African Dance and Art Collaborative provided youth ages 9-14 with after-school dance and visual arts activities at the St. Peter's School in Dorchester culminating in a dance performance and art show in June.

During Fiscal Year 2002, the Dorchester SNI was invited by the Executive Office of Public Safety to apply for funding for Fiscal Year 2003 to expand on the successes of the previous eight years. Through a collaborative process, Dorchester SNI partners developed a proposal for the Dorchester Youth and Family

Project (DYFP), the goal of which is to reduce and ultimately prevent youth crime by addressing a variety of factors underlying youth crime. The proposal was presented to and approved by the Executive Office of Public Safety. The Project will be funded by a Byrne Memorial Grant starting in Fiscal Year 2003.

### GROVE HALL SNI

In October 2001, the Grove Hall Safe Neighborhood Initiative began its second cycle as an officially recognized Weed and Seed site by the Department of Justice, Executive Office for Weed and Seed. In October, the Grove Hall SNI was awarded \$175,000 to support its activities centered on the four core Weed and Seed principles: (1) Law Enforcement (e.g., the investigation and elimination of open air and large-scale drug distribution); (2) Community Policing (e.g., police and community partnership to enhance traffic control and school safety and improve domestic violence response); (3) Neighborhood Restoration (e.g., the promotion of affordable housing and commercial development and the monitoring of construction and renovation of schools sites); and (4) Prevention, Intervention, and Treatment activities to bolster the safe haven capacity of the community. Several community programs were awarded "seed" mini-grants for their programs that collectively provide safe haven capacity and centered on priority issues identified by the target community. The programs were: Roxbury Multi-Service Center's CPASA and SENIORS programs; New Vision Community Development Corporation/Quincy Geneva Housing Corporation's Creative Learning After School Program; Grove Hall Residents Association's Youth Development and Early Intervention Program; We're Educators-A Touch of Class (WEATOC); Women of Color AIDS Council-Women Connecting and Effecting Change; and Harvard Street Neighborhood Health Center's Youth Substance Abuse Task Force.

The Grove Hall SNI/Boston Weed and Seed Site's Coordinating Council held seven regular meetings during the year and five community meetings attended by dozens of community residents in addition to representatives from law enforcement, government agencies, courts, service providers, and faith-based organizations.

### NORTHWESTERN DISTRICT SNI

Attorney General Reilly recognizes that issues of crime and neighborhood revitalization are not confined to large urban centers. For several years, the Attorney General and Northwestern District Attorney focused efforts in the Montague SNI by adding prosecution resources to address crime and eliminate drug trafficking in the Village of Turners Falls. These prosecution activities were largely successful, and it

was determined that the Attorney General's Office would continue its SNI collaboration with the Northwestern District Attorney's Office to develop a new SNI in the Town of Orange. Members of the Attorney General's Office and the District Attorney's Office began collaborating with the Town of Orange and its Police Department to start planning this new initiative. In March 2002, an AAG was assigned to the Orange District Court, where she assumed responsibility for prosecuting criminal cases occurring in the Town of Orange and additional cases committed by Orange residents. Her caseload involves offenses involving domestic violence, other assaultive conduct, breaking and entering/larcenies, and substance abuse involving both alcohol and narcotics. In May 2002, the first meeting of the Orange SNI Advisory Council was held with attendees representing numerous agencies, organizations, and community residents. Over the coming year, the Advisory Council will work to build a structure for the Orange SNI and to identify priority public safety and quality of life issues and strategies to address these issues.

### TAUNTON SNI

The Taunton SNI continued to focus on law enforcement, crime prevention, prevention, and quality of life issues. SNI partners include a broad base of representatives, among them, law enforcement, probation officers, health professionals, city agencies, and direct service providers. The City of Taunton continued to play a pivotal role in coordinating the efforts of the Taunton SNI partners. Representatives from the SNI Division participated in the monthly SNI Advisory Council meetings. The SNI Division facilitated the collaboration of the Attorney General's Office with the City of Taunton on its abandoned property initiative. As part of the initiative this year, a single-family home was placed into receivership and subsequently rehabilitated. The property will be sold to a qualified buyer at an affordable rate early next fiscal year.

### CITIZEN SCHOOLS

In the spring of 2002, the SNI Division launched a new Citizen Schools apprenticeship titled *Erase the Hate*. The *Erase the Hate* apprenticeship focused on helping students from the Grover Cleveland Middle School to recognize and respond to issues of stereotyping, bullying, hate, harassment, and tolerance. Students also focused on media literacy and developing basic conflict resolution skills. The apprenticeship culminated in the development of a poster created by the students as a way in which to educate others about the important issues addressed in the apprenticeship. The poster was displayed at a presentation hosted by the students at Attorney General Tom Reilly's Office on May 15, 2002 and distributed in the community.

## LAWRENCE AND METHUEN WEED AND SEED SITES

The Cities of Lawrence and Methuen are two newly recognized Weed and Seed sites coordinated by the respective police departments of each city. As experienced administrators of Weed and Seed in Grove Hall, the Attorney General's Office provided technical assistance to these sites as requested. At the end of Fiscal Year 2002, the Attorney General's Office was invited to serve on the steering committees of each site. An SNI development coordinator will represent the Attorney General on the steering committees and in the coming year, will look toward bringing resources of the Attorney General's Office to support the efforts of these new initiatives.

## RE-ENTRY

Having identified a need to support the productive reintegration of formerly incarcerated individuals back into SNI communities, the SNI Division submitted a request to the Executive Office of Public Safety for an Edward Byrne Memorial State and Local Law Enforcement Assistance formula grant. The grant was awarded in July 2002, and the SNI Community Re-Entry Project was launched. The purpose of the project is to provide offenders with the assistance necessary for them to successfully reintegrate into their communities with the ultimate goal of decreasing recidivism and increasing public safety. There are two project components: (1) the Grove Hall component focuses primarily on juvenile offenders, 14 to 21 years old returning to the Grove Hall neighborhood upon release from custody in a Department of Youth Services (DYS) secure treatment facility; and (2) the Bowdoin-Geneva component focuses on offenders, 17 to 24 years old, returning to the Bowdoin-Geneva neighborhood following a period of incarceration at the Suffolk County House of Correction. Both components utilize an enhanced case-management model and build on partnerships formed through the SNIs in both target communities. Project partners underwent extensive planning during the fall, and two project coordinators (one for each component) were hired in December. The principal partners coordinating with the Office of the Attorney General on the Grove Hall component are: DYS, Roxbury Youthworks, Inc., and the Boston Police Department. The principal partners coordinating with the Office of the Attorney General on the Bowdoin-Geneva component are: The Suffolk County Sheriff's Department, Community Resources for Justice, the Boston Police Department, the Dorchester District Court Probation Department, and the Suffolk County District Attorney's Office.

## SNI JOBS FOR YOUTH

One of the major SNI Division efforts aimed at prevention and intervention is the SNI Jobs for Youth. The program, which started in 1996, has grown from employing 23 youth in five communities to employing more than 90 young people in nine communities throughout the Commonwealth. Jobs for Youth sites offer job opportunities throughout the year and are not limited to summer employment. Each of the Jobs for Youth sites is described below.

Boston Sixteen youth from SNI target areas in Grove Hall and Dorchester were employed through the City of Boston's Community Centers (BCC) program during this fiscal year. Partnering with local businesses and agencies, BCC placed young people in a variety of locations, allowing them to learn skills including entrepreneurship, leadership, and civic duty. The goal was to provide employment opportunities, hands-on training, safe havens, and adult support. Placements included local community centers, private businesses, and neighborhood social services agencies.

Holyoke Holyoke's Jobs for Youth program is administered by the Holyoke Youth Alliance, which serves youth from low-income neighborhoods, particularly in downtown Holyoke. This program reinforces literacy skills, education, and responsible work behavior, and placed six youth ages 13-17 during the year. Youth assisted as readers and mentors, and read to young children at sites including family shelters and after-school programs.

Worcester The Jobs for Youth program in Worcester, run by the YMCA of Greater Worcester, serves at-risk youth in the Worcester area. Twenty youth, ages 15-19, participated during the year and were employed as computer tech assistants, office assistants, camp counselors, and peer leaders. The participants also completed a 36-hour employment training program and performed 100 hours of volunteer work.

Brockton The Old Colony YMCA in Brockton just completed its sixth year as a Jobs for Youth site. The program serves teens in the Brockton area who are enrolled in school or another educational program. The program's goal was to provide job opportunities, educational trainings, and recreational activities. This fiscal year the program employed three teens ages 17-18 in a local after-school community center.

Lynn Lynn's program is administered by the Community Minority Cultural Center and serves disadvantaged and at-risk youth. During this fiscal year, the program employed five teens who worked in various positions, including after-school programs and community arts programs.

Taunton Six youth ages 16-18 were placed through the Taunton Department of Human Services during this fiscal year. The youth were assigned to various city agencies, including the Taunton Public Schools, Taunton Public Library, and Head Start. The program's goal is to provide employment and educational opportunities to youth for skill-building and future employment capability.

Springfield The Springfield SNI Jobs for Youth program is administered through the Springfield Southwest Community Health Center and serves youth from low-income families. Seven youth ages 13-18 participated this fiscal year. The program provided youth with opportunities to increase their employability, self-esteem, and knowledge and skills in the area of health promotion. The youth were employed as peer health educators. Youth participated in delivering health education information, including violence prevention, to other youth at local community centers, the Salvation Army, and other social service agencies.

New Bedford Twelve at-risk youth in New Bedford received training through the University of Massachusetts/Dartmouth Division of Continuing Education. The goal of the program was to provide training and support for youth to become employed or to continue their education. Internship placements included local businesses, courthouses, colleges, social service agencies, and the City of New Bedford.

Chelsea This year Chelsea marked its seventh year as a Jobs for Youth site. The City of Chelsea administered the program and provided positions for five Chelsea teens at several area businesses and city agencies, including the Chelsea Public Library and Chelsea Cable TV. In addition to employment, the program offered opportunities for recreational team building and for helping the youth develop skills to choose challenging careers.

#### BYRNE MEMORIAL GRANTS

In June, the Attorney General's Office SNI Division was pleased to learn from the Massachusetts Executive Office of Public Safety Programs Division that we were being awarded continuation funding for the YES Project and the SNI Community Re-Entry Project as well as four new Edward Byrne Memorial State and Local Law Enforcement Assistance formula grants for Fiscal Year 2003. All projects involve collaboration with a variety of law enforcement, court-based, and community partners. The three new projects are described briefly below.

**Diversity and Cultural Competency for Court Personnel** This project involves developing and presenting a series of lunchtime workshops designed to increase court personnel awareness of general concepts of diversity as well as help them become familiar with the various cultural backgrounds, customs, traditions, and practices of the diverse populations served by the court. The second component involves developing and conducting a series of workshops designed to give diverse citizens of Plymouth County opportunities to learn about the Massachusetts Trial Court System. This project will complement activities of the Brockton SNI.

**Generating New Capacity for Crime Prevention Projects** This project will involve developing and facilitating workshops for small community-based organizations to help them bolster their capacity to build meaningful collaborations with law enforcement entities in order to plan effective programs and to develop fundable projects. This project will be geared to organizations serving the Grove Hall and Dorchester SNI target areas and those serving the communities of Lawrence and Methuen.

**Lawrence/Methuen Arlington Safe Neighborhood Initiative Community Prosecutor** This project will fund an Assistant Attorney General to work as a special assistant district attorney assigned to the Essex County District Attorney's Office to prosecute cases arising out of the Lawrence and Methuen Weed and Seed target areas. The prosecutor will also participate in community efforts associated with the Weed and Seed activities.

**Dorchester Safe Neighborhood Initiative Youth and Family Project** This project will build on the successful efforts and working relationships developed over the years with Dorchester SNI partners. Among the focuses for this project are concentrated truancy prevention, the provision of supervised recreational opportunities, and regular meetings with agencies and workers serving the diverse ethnic populations of youth in the neighborhood.

## **OUTREACH, EDUCATION, AND TRAINING**

The philosophy of the SNI is predicated on partnering with community stakeholders to enhance public safety and quality of life for neighborhoods. As such, all SNI staff regularly participate in formal and informal outreach activities to solidify existing working relationships as well as to build new ones. Some of these outreach activities are alluded to in the Significant Initiatives, Efforts, and Activities section of the SNI Division's report. For example, the Brockton SNI Community Liaison participates in numerous

community committees, and SNI Division staff telephoned and/or met with numerous community stakeholders to enlist their support and participation in the development of the new Orange SNI.

With regard to training, SNI staff have facilitated training in communities across the Commonwealth. Two examples are listed below.

- In coordination with the Attorney General's Office Public Protection Bureau and our partners in the Grove Hall SNI, the SNI Division planned and implemented a half-day seminar on Elder Fraud and Abuse attended by nearly 200 seniors from the Grove Hall SNI target area.
- In the spring of 2002, the SNI Senior Development Coordinator was a presenter at the annual LECC conference sponsored by the U.S. Attorney's Office. Her presentation was on the principles of the national Weed and Seed strategy and tips for law enforcement agencies seeking to build collaborations to obtain official recognitions as a Weed and Seed site.

Additionally, SNI staff participated in staff and program development training. For example:

- The SNI Prosecutor for the Northwestern District attended the community prosecution program offered by the National District Attorney's Association in Columbia, South Carolina.
- In September and October 2001, with a resident from the Grove Hall SNI target area, a police department representative, and a community agency representative, the SNI Senior Development Coordinator participated in a mandatory eight-day accreditation training sponsored by the Executive Office for Weed and Seed.



# CRIMINAL BUREAU

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APPELLATE DIVISION

HIGH TECH AND COMPUTER CRIME DIVISION

PUBLIC INTEGRITY DIVISION

VICTIM /WITNESS ASSISTANCE DIVISION

SPECIAL INVESTIGATIONS AND NARCOTICS DIVISION

ECONOMIC CRIMES DIVISION

ENVIRONMENTAL CRIMES STRIKE FORCE

FINANCIAL INVESTIGATION DIVISION

CONSUMER PROTECTION PROSECUTION UNIT

CENTRAL ARTERY/TUNNEL PROJECT



## CRIMINAL BUREAU

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The primary mission of the Criminal Bureau is to prosecute violations of state criminal laws resulting in or involving significant economic loss or injury; harm to the environment; misconduct by public employees or elected officials; crimes against public agencies; organized crime; drug trafficking; crimes involving computers and other forms of technology; and cross-jurisdictional criminal organizations. The Criminal Bureau also prosecutes criminal cases referred to it by District Attorneys' Offices and cases that further priorities of the Attorney General, such as crimes against children, the elderly, and other particularly vulnerable groups.

The majority of criminal cases prosecuted by the Criminal Bureau result from investigations conducted by police officers and investigators assigned to the Criminal Bureau. During Fiscal Year 2002, approximately 25 State Police Officers, four officers of the Environmental Police, and eight civilian Criminal Investigators were assigned to the Criminal Bureau. Additionally, in some instances, law enforcement officers from other local, state, and federal agencies participated in investigations conducted by the Criminal Bureau.

Another mission of the Criminal Bureau is to promote effective law enforcement and criminal justice in the state. The Criminal Bureau accomplishes this mission by maintaining partnerships with the Massachusetts District Attorneys Association, the Massachusetts Chiefs of Police Association, the Executive Office of Public Safety, and other law enforcement agencies and associations; developing criminal justice policy; proposing legislation; and participating in training programs for prosecutors, police officers, judges, and others involved in the criminal justice system.

Assistant Attorneys General assigned to the Criminal Bureau represent the Commonwealth in criminal prosecutions throughout the state, handle proceedings in state and federal courts challenging criminal convictions, and represent prosecutors, judges, and other state criminal justice employees who are sued in the performance of their duties. During Fiscal Year 2002, the Criminal Bureau received more than 1,408 inquiries and complaints from citizens, and reviewed 138 rendition and extradition requests forwarded to it by the Executive Office of the Governor.

The Criminal Bureau is organized into the following divisions and units, each of which reflects an area of specialization and expertise: Appellate, High Tech and Computer Crime, Public Integrity, Victim/Witness Assistance, Special Investigations and Narcotics, Economic Crimes, Environmental Crimes Strike Force, Financial Investigation, Consumer Protection and Prosecution Unit, and Central Artery/Tunnel Project.

In addition to these divisions, the Criminal Bureau contains the Consumer Protection Prosecution Unit, which is staffed by a senior prosecutor, David Cosgrove, who reports directly to the Deputy Chief of the Criminal Bureau and an experienced fraud investigator. The Criminal Bureau also contains the Director of the Central Artery/Tunnel Project, who coordinates criminal investigations and prosecutions of individuals, contractors, and corporations alleged to have engaged in criminal law violations on the Central Artery/Tunnel Project.

At the close of Fiscal Year 2002, the Criminal Bureau prepared for a restructuring of the bureau to be implemented at the outset of Fiscal Year 2003. As part of the restructuring, the Criminal-Based Justice Bureau will merge with the Criminal Bureau, resulting in the addition of two new divisions to the Criminal Bureau roster, the Safe Neighborhood Initiative Division and the Victim Compensation and Assistance Division; a new division, the Criminal Justice Policy Division, will be formed; and the three white-collar crime divisions — the Public Integrity, Economic Crimes, and High Tech and Computer Crime Divisions — will be merged into a single division, the Corruption, Fraud & Computer Crimes Division. The foregoing restructuring was designed to more efficiently service criminal matters handled by the Attorney General's Office and reflects the Office's desire to enhance the professional development of Criminal Bureau AAGs and need to accommodate the staff reduction caused by uncertain economic times.

The Chief of the Criminal Bureau is Kurt Schwartz. The Deputy Chief of the bureau is Michele Adelman. The Division Chiefs within the Criminal Bureau during Fiscal Year 2002 were: William Meade, Appellate Division; John Grossman, High Tech and Computer Crime Division; Pamela Wechsler, Public Integrity Division; Kathleen Morrissey, Victim/Witness Assistance Division; William Bloomer, Special Investigations and Narcotics Division; Carol Starkey, Economic Crimes Division; Paul Molloy, Environmental Crimes Strike Force; Paul Stewart, Financial Investigation Division; Detective Lieutenant Mark Delaney and thereafter Lieutenant Steve Matthews of the Massachusetts State Police, Criminal Investigation Division; and Nancy Bloomberg, Central Artery/Tunnel Project.

The Criminal Bureau also had three bureau attorneys during Fiscal Year 2002. Mary Phillips, Bureau Attorney for Training and Administration, coordinated the Attorney General's Grand Jury process throughout the Commonwealth, developed training programs for the Criminal Bureau, served as the Chair of the Training Committee for the Office of Attorney General Tom Reilly, and advised the Bureau Chief on administrative and budgetary matters. James O'Brien, Bureau Attorney for Policy and Legislation, developed and coordinated criminal justice initiatives, and reviewed and drafted legislation affecting the criminal justice system. David Cosgrove, Bureau Attorney for Consumer Protection Matters and liaison to the Public Protection Bureau, investigated and prosecuted criminal consumer complaint cases, including

cases involving home improvement contractor fraud, telemarketing and charitable solicitation scams, and economic crimes against vulnerable communities such as immigrants and the elderly.

## APPELLATE DIVISION

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The Appellate Division handles a wide variety of criminal, federal habeas corpus, state habeas corpus, and other civil cases that impact criminal prosecutions and the criminal justice system. The division's caseload includes appeals and post-conviction matters in criminal cases prosecuted at the trial level by the Attorney General's Criminal Bureau and from convictions of criminal contempt throughout the Commonwealth; all habeas corpus petitions filed in federal court that challenge Massachusetts convictions, parole surrenders, civil commitments, and renditions; and appeals in the First Circuit Court of Appeals from the denial or granting of habeas corpus relief. The division also engages in civil litigation defending judges, clerks, probation officers, and other court personnel, district attorneys, assistant district attorneys, and other prosecutorial personnel sued civilly in state or federal court for actions taken during the criminal justice process. The assistant attorneys general in the division defend the constitutionality of criminal statutes, as well as other statutes, court rules, practices, and procedures that concern all aspects of the criminal justice system; represent the interests of prosecutors when subpoenaed to testify or provide documents in federal civil cases; supervise agency staff attorneys handling litigation involving the Department of Correction, the Parole Board, and the Commission of Probation; and handle appeals and federal court litigation concerning the Parole Board.

In addition to their casework, division attorneys provide assistance to other Criminal Bureau attorneys on investigations, motions, trials, post-conviction proceedings, and single justice actions, and consult with or assist other bureaus in matters where the criminal justice expertise or perspective is important. The division also works closely with the District Attorneys' Offices, especially their Appellate Divisions, in identifying and acting as a clearinghouse on criminal law issues of statewide importance and interest.

The Appellate Division files approximately 60 appellate briefs per year in the United States Supreme Court, Court of Appeals for the First Circuit, Supreme Judicial Court, and Massachusetts Appeals Court. The division files *amicus* briefs on behalf of the Attorney General in cases having broad impact and importance to the criminal justice system, consistent with the Attorney General's statutory responsibility as the chief law enforcement officer of the Commonwealth. The division also files in the United States District Court approximately 120 substantive memoranda of law per year in opposition to federal habeas corpus petitions.

The Appellate Division included William Meade, Division Chief; James Arguin; Eva Badway; Annette Benedetto; Thomas Dee; Maureen Giacoppo; Dean Mazzone; Cathryn Neaves; and Linda Wagner.

## SIGNIFICANT CASE SUMMARIES

- **Trevor Neverson v. Lynn Bissonette** (First Circuit) Appeal from the dismissal of a time-barred federal habeas petition challenging petitioner's 1990 Hampden County manslaughter conviction. On August 20, 2001, the order of dismissal was affirmed.
- **Charles Delaney v. James Matesanz** (First Circuit) Appeal from dismissal of federal habeas petition challenging Plymouth County second degree murder conviction raising statute of limitations issue. On September 5, 2001, the judgment of the district court was affirmed.
- **Hung Tan Vo v. Michael Maloney** (First Circuit) Appeal from denial of federal habeas petition challenging Middlesex County first-degree murder conviction on the grounds of ineffective assistance of counsel and erroneous jury instructions. On September 24, 2001, the judgment of the district court was affirmed.
- **Mark A. Kibbe v. Larry E. DuBois** (First Circuit) Appeal by Commonwealth from district court decision granting federal habeas petition challenging Hampden County arson conviction. On October 23, 2001, the judgment of the district court granting the writ was reversed and the conviction was reinstated.
- **Commonwealth v. Jeffrey Maniff** (Appeals Court) Appeal from Attorney General's Office prosecution and conviction of defendant for multiple counts of larceny from two 90-year-old victims. On December 20, 2001, the convictions were affirmed.
- **Charles Fryar v. Lynne Bissonnette** (United States District Court) Federal habeas petition challenging Hampden County conviction for second-degree murder on grounds of errors in the jury selection process and exclusion of exculpatory evidence. On February 5, 2002, the petition was denied.
- **GLAD, et al v. Thomas F. Reilly, et al.** (Supreme Judicial Court) Civil action seeking a declaration that G.L. c. 272, §§ 34 and 35 (sodomy and unnatural acts statutes) were

unconstitutional on their face and that an injunction should issue against their enforcement by the Attorney General and District Attorneys of Suffolk and Middlesex counties. On February 21, 2002, the Supreme Judicial Court dismissed the complaint and entered judgment for the Attorney General.

- Commonwealth v. Richard Pimental (Appeals Court) Appeal from Attorney General's Office prosecution and conviction for larceny of a firearm by a police officer administering the Taunton Police Department gun buyback program. Judgment affirmed on March 27, 2002.
- Sean Fabre v. Amalia Walton (Supreme Judicial Court) Appeal on reserve and report from a G.L. c. 211, § 3 petition seeking relief from a denied special motion to dismiss a SLAPP suit brought by respondent against his former girlfriend in retaliation for her receiving a 209A order against him. On April 12, 2002, the Supreme Judicial Court created at our urging a right of interlocutory review of special motions to dismiss SLAPP suits and reversed the denial of Walton's special motion to dismiss.
- Paul Gunter v. Michael Maloney (First Circuit) Appeal from a decision of the district court granting a federal habeas petition which challenged a Suffolk County first-degree murder conviction. On April 29, 2002, the judgment of the district court was reversed and the conviction was reinstated where the petitioner's merged felony claim and the Supreme Judicial Court's resolution of it were procedurally defaulted.
- Lonnie Watkins v. Paul Murphy (First Circuit) Appeal from the denial of a federal habeas petition challenging 1994 Suffolk County convictions for two counts of first-degree murder and armed robbery. Judgment was affirmed on June 11, 2002.

- **Johnny Stephens v. Timothy Hall** (First Circuit) Appeal from the allowance of a federal habeas petition from 1993 Suffolk County convictions for unarmed robbery and ABDW claiming ineffective assistance of counsel. On June 28, 2002, the judgment of the district court was reversed and the petitioner's convictions were reinstated.

### STATISTICAL SUMMARY

	CASES OPENED	CASES DISPOSED	PENDING CASES	TOTAL CASES HANDLED
A. Federal Habeas	153	244	72	469
B. Federal Civil	20	32	5	57
C. State Civil	15	52	19	86
D. State Habeas	12	34	5	51
E. Criminal	26	53	11	90
F. 211 § 3 and Other Single Justice Cases	12	17	1	30
G. Other				
<b>TOTAL</b>	<b>238</b>	<b>432</b>	<b>113</b>	<b>783</b>

### SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

In addition to the large caseload handled by the division, the division became involved in a number of significant initiatives. Among these efforts were the following:

- Massachusetts Bar Association Appellate Bench / Bar Committee
- Supreme Judicial Court's / Appeals Court's Information Technology Advisory Committee

- Co-Chair of AGO's Diversity Committee
- Massachusetts Bar Association, Judicial Administration Task Force, Project Advisory Group
- Rendition point person for Criminal Bureau
- Member of the Lawyer's Committee for Civil Rights Board of Directors
- Elder Task Force
- Clerk, American Middle Eastern Lawyers Association
- Paul McLaughlin Center, Volunteer Reader

## OUTREACH, EDUCATION, AND TRAINING

The Appellate Division devoted a substantial amount of energy and resources to training and outreach. These efforts included the following:

- Massachusetts District Attorneys Association Conference
- Commonwealth Appellate Attorneys Action Project
- Lecturer and Clinical Coordinator at Harvard Law School
- Guest Lecturer, Suffolk University Law School
- MCLE Faculty Panelist, Representing Indigent Parties in Federal Court
- Articles Editor, *Massachusetts Law Review*
- Associate Editor, *Massachusetts Law Review*

## **HIGH TECH AND COMPUTER CRIME DIVISION**

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The mission of the High Tech and Computer Crime Division (HTCC) is to provide high-tech law enforcement expertise to the Commonwealth. In doing so, we serve three constituencies:

1. The individual citizens of the Commonwealth, particularly the children, who are increasingly communicating, buying and selling, and just passing time on the Internet;

2. The businesses and universities of the Commonwealth that drive our knowledge-based economy and that are dependent on computers and the Internet; and
3. Other law enforcement agencies (as well as other divisions within the Office of the Attorney General) that rely on our expertise to support them in the full range of crimes that they investigate and prosecute, from homicide to narcotics trafficking.

We serve these three constituencies in three inter-related ways:

1. Investigation and prosecution of cases in which computers or the Internet plays a crucial role;
2. Investigative, legal, and computer forensics support to other law enforcement agencies; and
3. Education, outreach, and policy development.

The HTCC handles a wide variety of cases in which computer technology or the Internet plays a crucial role. The two areas of focus are preserving the integrity of the Commonwealth's knowledge-based economy and protecting the well-being of our children. The first category of cases includes intrusions to computer systems, related extortion attempts, theft of trade secrets and other intellectual property, such as trademarks and domain names, and the most egregious attempts to undermine the nascent Internet economy by defrauding consumers. The second category includes targeting child sexual predators on the Internet, dissemination and possession of child pornography, and Internet threats to public institutions, such as schools.

HTCC included John Grossman, Division Chief; Jennifer Austin; Trooper David Crouse; Trooper Steve Fennessy; Ursula Knight; Investigator Eric Lundberg; Trooper Matthew Murphy; Lieutenant Dermot Quinn; and Julie Ross.

## SIGNIFICANT CASE SUMMARIES

- Commonwealth v. Adam Lewis and Commonwealth v. Michael Dewhurst (Gardner and New Bedford District Courts) Both of these cases involved Internet auction fraud. In the Lewis case, the defendant collected money from over 100 people around the country for computer equipment he advertised but never delivered. In the Dewhurst case, the defendant collected between \$2,500 and \$6,000 from each of the people, over 20, that he conned by promising them high-definition televisions. Each man pleaded guilty to larceny by a continuous scheme. Lewis was sentenced to two years in the House of Correction, with a year to serve and the balance suspended for three years. Dewhurst was sentenced to two and one half years in the House of

Correction, with six months to serve and the balance suspended for three years. Each was ordered to pay restitution.

- Commonwealth v. Anthony DiPrizio (Falmouth District Court) The defendant hacked into the Falmouth High School computer system and Web site and downloaded various confidential files, including student medical records. He pleaded to sufficient facts and received a two-year continuance without a finding and was ordered to perform 150 hours of community service and pay a \$1,000 fine.
- Commonwealth v. Jeffrey Walls (Essex County Superior Court) HTCC began an investigation of the defendant based on information that he had downloaded child pornography to his work computer. During the course of the investigation, the HTCC team discovered that the defendant had allegedly engaged in sexual activity with a young boy on numerous occasions between the victim's fifth and eighth birthdays. State Police also identified a second young boy whom the defendant also allegedly sexually assaulted on several occasions. The defendant faces one count of rape of a child under 16, two counts of indecent assault and battery on a child under 14, and possession of child pornography charges. This case is now scheduled for trial.
- Commonwealth v. Nancy Jane McDonald (Cambridge District Court) At the height of the anthrax mailings in the fall of 2001, ENDECA, a Cambridge-based high-tech business, received a number of anthrax-related threats on their Web site. They initially reported to local law enforcement but did not receive a strong response. On Friday, October 19, the victim contacted the High Tech and Computer Crime Division. By that evening, we had identified the source of the threats and executed a search warrant, seizing a computer. On Tuesday, October 23, Nancy Jane McDonald surrendered to the Cambridge District Court to face charges of threats to commit a crime and assault. This case is now scheduled for trial.

## STATISTICAL SUMMARY

The following chart summarizes the case referrals that HTCC screened for possible investigation and prosecution during Fiscal Year 2002 and the number of those referrals that matured into formal investigations.

CASE DESCRIPTION	NUMBER OF REFERRALS	NUMBER OF CASES OPENED
Theft of Trade Secrets and Other Intellectual Property	8	3
Computer Intrusions	16	8
Consumer Fraud	247	11
Child Exploitation	27	21
Threats/Cyberstalking	50	16
Unsolicited E-Mail or SPAM	22	0
Purchase of Explosives/Illegal Goods	2	2
Other	5	2
<b>TOTAL</b>	<b>377</b>	<b>63</b>

In the past year, HTCC received an extraordinarily high number of consumer fraud complaints; this reflects in part the severity of the problem and in part the ongoing success of the Internet Fraud Complaint Center (IFCC), a joint project of the National White Collar Crime Center (of which the Attorney General's Office is a member) and the FBI to consolidate all such complaints in one database. The center refers to HTCC every complaint that either concerns a Massachusetts target or is received from a Massachusetts victim. HTCC then screens the referrals and targets the most compelling cases, most of which involve targets in the Commonwealth who have defrauded a substantial number of people. The

remaining IFCC cases are referred to the Public Protection Bureau's Consumer Protection Division for review.

During Fiscal Year 2002, HTCC charged 13 individuals with various crimes, including unauthorized access (computer hacking), statutory rape, threats to commit a crime, identity fraud, criminal harassment and dissemination of child pornography. Eleven people pleaded guilty or otherwise admitted to sufficient facts in Superior or District courts across the Commonwealth.<sup>1</sup> HTCC prosecutors also worked on cases outside of the subject matter of computer crimes. For example, one prosecutor obtained a conviction in a homicide, Commonwealth v. Osca Urrea, as a Special Assistant District Attorney for Suffolk County, and another prosecutor obtained a guilty plea in a narcotics case. In addition, one HTCC prosecutor spent four months in Roxbury District Court handling cases for the Grove Hall Safe Neighborhood Initiative.

## SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

In addition to the cases that we investigated and prosecuted within HTCC, the division assisted other divisions within the Attorney General's Office and District Attorneys' Offices in over 65 separate matters. In some cases, this assistance consisted of legal advice and reviewing search warrants; in others, of performing computer forensics. This year, for the first time, the forensics not related to HTCC cases were almost exclusively related to other cases from throughout the Attorney General's Office, including the Special Investigations and Narcotics, Insurance Fraud, and Medicaid Fraud Divisions.

HTCC has historically been very involved in encouraging and coordinating efforts between the public and private sectors to promote Internet and computer security. The importance of these efforts was further emphasized by the events of September 11, 2001. In the time since, members of the division have spent substantial time and effort serving in organizational capacities for Infragard Boston — the National Infrastructure Protection Center's public/private outreach program — and the Anti-Terrorism Task Force's Public/Private Working Group. They have also taken a lead role in convening representatives of the President's Critical Infrastructure Protection Board, the U.S. Department of Commerce's Critical Infrastructure Assurance Office, Harvard's Kennedy School, the MITRE Corporation, the Commonwealth's Information Technology Division, various industry interest groups (such as the ISSA and the Internet Alliance), private businesses, and others to define the state's role in defending the cyber-infrastructure.

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<sup>1</sup>Some of the cases charged this year remain pending, just as some of the cases resolved this year were charged previously.

Finally, HTCC prosecutors worked closely with staff from the Executive Bureau to research, draft, and promote various legislative changes demanded by changes in technology. The changes included a technical amendment to the definition of child pornography to ensure that it included digital pictures; a new terroristic threats law that would adequately punish a defendant for the harm done when threatening a large group of people with profound harm, a form of threat often promulgated over the Internet; an update of the hacking laws; and changes to the administrative subpoena statute that would assure that local law enforcement has the tools to protect its constituencies from computer crime.

## OUTREACH, EDUCATION, AND TRAINING

HTCC devoted a substantial amount of energy and resources to training and outreach. These efforts allowed us to leverage our relatively limited resources to (a) teach people and institutions to avoid becoming victims of high tech crimes and (b) where we cannot prevent the crimes from happening, assure that law enforcement has the capacity to respond.

Among the highlights in this area over the last year were:

- Participation in a number of law enforcement training conferences, including meetings of the Southeastern Massachusetts Computer Crimes Task Force (REACCT) and the High Tech Criminal Investigators Association.
- Safe and Ethical Internet Use presentations made at schools around the Commonwealth to students, parents and educators, including the Abigail Adams Middle School in Weymouth and the Paul McLaughlin Center in Dorchester.

We also participated in various training programs to assure that we remain current in the dynamic field of computer crime. A highlight was the presentation that Genuity created for HTCC to brief our prosecutors and investigators on the emerging Voice Over I.P. technology that allows telephone calls to be routed over the Internet.

## PUBLIC INTEGRITY DIVISION

The primary mission of the Public Integrity Division (PID) is to investigate and prosecute crimes committed by and against public employees that compromise the public's confidence in government or harm public agencies. In Fiscal Year 2002, prosecutions included crimes committed against state and

local public agencies and government-funded organizations, as well as crimes committed by government employees, agents, and contractors.

Members of the Public Integrity Division investigate cases with the assistance of Massachusetts State Police troopers and forensic financial investigators assigned to the Criminal Bureau. In addition, division attorneys often work with local police departments, other State Police Officers, federal law enforcement officials, and investigators assigned to other government agencies. The Public Integrity Division maintains close working relationships with other state and federal agencies involved in either investigating crimes by and against public employees and agencies, or enforcing laws concerning the conduct of public employees and agencies. These agencies include the State Ethics Commission, the Department of Revenue, the Office of the State Auditor, the Office of the Inspector General, the United States Attorney's Office, the Federal Bureau of Investigation, the Federal Department of Transportation, the Federal Postal Inspectors, Local District Attorneys' Offices, various retirement boards, local town counsels, and city solicitors' offices.

Members of the division for all or part of Fiscal Year 2002 included: Pamela Wechsler, Division Chief; Eugenia Carris; Patrick Lee; Phil McGovern; Nancy Rojas; Frank Russo; and Kim West.

### SIGNIFICANT CASE SUMMARIES

- Commonwealth v. Walid Mobarak (Suffolk Superior Court) This case involved widespread government corruption within the Boston Police Department's Hackney Unit. The Office of the Attorney General joined with Boston Police Department detectives, Federal Bureau of Investigation agents, and members of the United States Attorney's Office to prosecute this matter in state and federal courts. The Public Integrity Division prosecuted four individuals, including Walid Mobarak. Mobarak was a cooperating government witness who acted as a middleman between unqualified taxi applicants and Boston Police Department officials by delivering bribes to Boston Police officers in exchange for the issuance of taxi licenses. Mobarak pleaded guilty to five counts of Bribery and was sentenced to two years probation.
- Commonwealth v. Percy Wayne Martin (Suffolk Superior Court) Percy Wayne Martin stole confidential identification information from over a dozen people, all with the surname Martin. He used the information to make false identification cards, take out loans, and open credit accounts. He stole approximately \$75,000. Martin pleaded guilty to multiple counts of

Identity Theft, Larceny, Forgery, Uttering, and Bank Fraud. He was sentenced to serve not more than two and not less than three years in State Prison.

- **Commonwealth v. Eileen Stocker** (Suffolk Superior Court) Eileen Stocker entered local elementary school classrooms and stole wallets from teachers. She then withdrew money from their bank accounts, cashed stolen checks, and charged items on stolen credit cards. She pleaded guilty to Forgery, Uttering, Larceny, and Identity Theft and was sentenced to five years probation and \$5,000 restitution.
- **Commonwealth v. Shannon Gordon and John Hodnett** (Suffolk Superior Court) Shannon Gordon, a Boston Public School Department administrator, and her boyfriend John Hodnett abused Gordon's position as a public employee. Specifically, they created a phony day care center account in order to fraudulently receive funds that had been allotted to provide childcare and educational services to low-income preschoolers. Both defendants pled guilty and were sentenced to 18 months probation, restitution of \$22,000, and 400 hours community service.
- **Commonwealth v. Jeanna Monterio** (Barnstable District Court) Jeanna Monterio was a clerk in the Barnstable Superior Court's Probation Department who stole more than \$8,000 of probation monies. Monterio pled guilty to Larceny and was sentenced to two years supervised probation. She was ordered to have no direct dealings with any monies or finances and to pay \$8,018 in restitution.
- **Commonwealth v. John Kennedy** (Fitchburg District Court) John Kennedy was charged with attempting to solicit sex via the Internet from an undercover trooper who was posing as a 15-year-old girl. The defendant pled guilty to Attempting to Pose as a Minor, Attempting to Disseminate Harmful Matter to a Minor, and Possession of Child Pornography. He was sentenced to two and one half years in the House of Correction with 30 days to serve and five years probation (the first five months of probation under house arrest), to undergo sex offender treatment, to have no unsupervised contact with children, and to have limited access to computers.
- **Commonwealth v. Etteh Akpanoluo** (Roxbury District Court) Etteh Akpanoluo pleaded guilty in the Roxbury District Court to Larceny by Embezzlement. The defendant ran a local state-funded agency that provided de-leading programs for low-income residents. He embezzled \$48,000 from an escrow account. The case was Continued Without a Finding, and the defendant was placed on probation for five years and ordered to pay \$48,000 restitution. Co-defendant, Adeyeye Anjorin, fled to Nigeria and is in default.

- Commonwealth v. Efraine Rivera (Middlesex Superior Court) This was a jury-waived trial. Efraine Rivera was a former Lowell District Court Probation Department translator who had been accused of accepting bribes from an informant. The defendant was acquitted of Bribery.
- Commonwealth v. Steven Berry (West Roxbury District Court) Steven Berry was a conflict case from the Suffolk County District Attorney's Office. Berry became violent in South Boston District Court during a probation hearing when he threatened several people, broke a door frame, and assaulted court personnel. The defendant pled guilty to Assault and Battery, Malicious Destruction of Property, Threats, and Disruption of Court Proceedings. He was sentenced to serve two years in the House of Correction.
- Commonwealth v. Lawrence Shetler (Suffolk Superior Court) Lawrence Shetler was the President of a Cambridge engineering firm who submitted a falsified bid on a Central Artery/Tunnel Project contract. Shetler was charged with Procurement Fraud in 1995 and had been in default. He was placed on pre-trial probation for two years, ordered to perform 400 hours of community service, and barred from bidding on state contracts for five years. Shetler had been planning to run for Lieutenant Governor of Rhode Island but withdrew from the race when newspapers reported on the matter.
- Commonwealth v. Lee Robinson (Springfield District Court) Lee Robinson submitted a false bid on behalf of a company to the Town of East Longmeadow for a security system in a new middle school. He then submitted a lower bid on behalf of ADT Security in order to receive the contract. He was charged with Procurement Fraud, Forgery, and Uttering a Forged Instrument. He admitted to sufficient facts and received a CWOI for one year \$1,500 fine, \$500 court costs, \$60 victim witness fee, and 20 hours of community service at a nonprofit agency. He was also prohibited from directly engaging in negotiations or bidding on government contracts for the duration of his probation.
- Commonwealth v. James Mills (Middlesex Superior Court) James Mills, a court-appointed investigator, had been convicted after a jury trial for multiple counts of Larceny, Perjury, Failure to File Income Tax Returns, Pension Fraud, and Submitting False Claims. This past year, the case was reversed in part by the Supreme Judicial Court and remanded for resentencing. Mills was resentenced to serve not more than four years and not less than four years and one day in State Prison for Perjury, Procurement Fraud, and Submitting False Claims; one year concurrent in the House of Correction for Pension Fraud and Failure to File Income Tax Returns; four years probation from and after for Larceny Over \$250; and \$100,000 in restitution.

- Commonwealth v. Yovette Mumford (Suffolk Superior Court) Yovette Mumford faces multiple counts of procurement fraud and tax charges. The allegations stem from her alleged activities as the President of a company that secured a contract with the Central Artery/Tunnel Project (CA/T) for Big Dig electrical inspection services. Mumford is alleged to have billed the Big Dig for over \$80,000 in personal expenses that were unrelated to the work she was doing for the Project and not to have paid the Commonwealth the withholding taxes she held back from her employees' compensation. This criminal case remains pending at the close of the fiscal year.

### STATISTICAL SUMMARY

Opened Investigations	187
Charged in District Court	9
Indicted in Superior Court	13
Disposed in District Court*	8
Disposed in Superior Court*	7
Closed Cases*	198

\* Some were opened in prior fiscal years.

During Fiscal Year 2002, the Public Integrity Division reviewed 187 new referrals of alleged criminal misconduct and disposed of 198 cases (some of which were received in prior fiscal years). Thirteen cases were indicted, and 15 cases resulted in guilty pleas. Of the 15 pleas, eight were handled in district courts and seven were handled in superior courts. There were one superior court trial and nine evidentiary motions. Four search warrants were executed during the course of Grand Jury investigations.

## SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

In addition to the cases that we investigated and prosecuted, division members undertook significant initiatives. Several division members participated in the Citizens School Mock Trial program. One division member organized an officewide anti-terrorism lecture titled Islamic Faith & Civil Rights. Other division members served on a number of officewide committees, including the Hate Crimes Task Force, the Child Protection Project, the School Violence Project, the Racial Profiling Committee, and the Employee Benefits Committee. In addition, the Division Chief also became the Criminal Bureau's member of the Attorney General's Institute (an internal program designed to enhance training to all staff members).

## OUTREACH, EDUCATION, AND TRAINING

Public Integrity Division attorneys participated in numerous trainings both inside and outside of the office during Fiscal Year 2002. Among the highlights in this area over the last year were:

- Instructor on Direct and Cross Examination at National Association of Attorneys General training
- Attendance at a weeklong National Association of Attorneys General training on Telemarketing Fraud
- Preparation of a chapter on Trial Advocacy for a Massachusetts Continuing Legal Education publication
- Lecturer at a Massachusetts Continuing Legal Education course on Trial Skills
- Certification as a National Institute of Trial Advocacy Trainer
- Trial Adviser at Harvard Law School
- Panelist for an officewide training on Dealing with the Media
- Attendance at a statewide Anti-Terrorism Conference
- Instructor at a two-day AG Institute deposition training
- Attendance at a Procurement Fraud training

## **VICTIM / WITNESS ASSISTANCE DIVISION**

The Victim/Witness Assistance Division (VWAD) of the Attorney General's Criminal Bureau was developed to meet the following goals: (1) to provide crisis assessment and intervention to crime victims and witnesses to facilitate their emotional, psychological, physical, and financial recovery from victimization; (2) to reduce the level of secondary victimization associated with victims' and witnesses' involvement in the criminal justice system and other collateral systems; and (3) to aid in the prosecution of criminal cases by ensuring that crime victims and witnesses are provided with the rights and services mandated by the Victim Rights Law (G.L. c. 258B). Advocates in the Criminal Bureau provide victim advocacy and witness management services to all of the bureau's divisions: 1) Appellate; 2) Criminal Investigation; 3) Economic Crimes; 4) Environmental Crimes Strike Force; 5) Financial Investigations; 6) High Tech and Computer Crime; 7) Public Integrity; and 8) Special Investigations and Narcotics. Advocates are occasionally assigned to prosecutions in other bureaus of the Office when the prosecutor identifies the need for victim/witness services.

The nature of these cases varies depending on the referral source. Advocates also provide victim/witness coverage on conflict cases referred to the Office by the 11 District Attorneys' Offices across the Commonwealth. These referrals typically involve cases of violent crime. The Victim/Witness Assistance Division, in an effort to build community partnerships and to address victim issues identified as mandated priorities of Attorney General Tom Reilly, participates in a number of initiatives relating to children, safety in our schools, elders, fraud, health care, high tech and computer crime, domestic violence, diversity, and curative legislation.

During Fiscal Year 2002, VWAD staff included Kathy Morrissey, Director; Helena Dunn; and Kelly Payne.

### **SIGNIFICANT CASE SUMMARIES**

Six cases of particular note illustrate work in priority areas set by Attorney General Tom Reilly: high tech and computer crime; elders and fraud; and consumers and identity fraud.

- Commonwealth v. Anthony DiPrizio (High Tech & Computer Crime Division) On October 4, 2001, the defendant in the above-captioned case, Anthony DiPrizio, a Falmouth High School student, admitted to sufficient facts to warrant a finding of guilty before Judge Michael Creedon in Falmouth District Court to two counts of Unauthorized Access to a Computer. Judge Creedon continued the defendant's case without a finding for two years and

placed the defendant on probation for two years to be supervised by the Falmouth District Court Probation Department. In addition, the defendant was ordered to perform 150 hours of community service and to pay a fine in the amount of \$1,000. The division provided witness management on the DiPrizio case and, in order to address safety issues and for purposes of notification, maintained close contact with the Mashpee Public Schools Superintendent and Network Administrator as well as the Mashpee High School Principal.

- Commonwealth v. Leo R. Burns and Thomas J. Ribaga (Economic Crimes Division) The trial of Commonwealth v. Leo R. Burns and Thomas J. Ribaga began on March 12, 2002 before Judge Gary Nickerson in the Barnstable Superior Court, Barnstable, Massachusetts. On March 15, 2002, the fourth day of trial, both defendants changed their pleas to guilty to all of the larceny charges against them. Defendant Leo R. Burns pleaded guilty to nine counts of Larceny Over \$250, and defendant Thomas J. Ribaga pleaded guilty to 10 counts of Larceny Over \$250.

On March 18, 2002, Judge Nickerson sentenced the defendant Leo R. Burns to two years in the House of Correction, one year of the sentence to be served, the balance suspended for nine years with probation to be supervised by the Barnstable Superior Court Probation Department. Judge Nickerson also imposed a 10-year term of probation to begin immediately to ensure that any assets currently held by the defendant Burns would be available for restitution. On the same day, the defendant Thomas J. Ribaga was sentenced to 10 years probation to be supervised by the Barnstable Superior Court Probation Department. In addition to being jointly responsible with Burns for paying restitution to the victims in the amount of \$144,838.62, Ribaga was held individually responsible for paying \$168,000 to two additional victims.

The division provided victim advocacy to the six individuals, including several elders, who were victimized by and lost money to the defendants. The advocate developed a strong rapport with the victims by: keeping them notified of the case status; explaining the court process throughout the duration of the case; and providing court accompaniment. All of the victims took an active interest in the prosecution of this matter, and several victims submitted Victim Impact Statements that were read at the time of sentencing. Following disposition, the division assisted the victims with the certification process to apply for notice of Burns' release. The division also coordinated with the appropriate probation departments to ensure that the victims receive restitution from both defendants.

- Commonwealth v. Shirley Hoak (Economic Crimes Division) On March 27, 2002, the defendant, former Cambridge attorney Shirley Hoak, pleaded guilty before Judge Carol Ball in Middlesex Superior Court to 17 counts of Larceny Over \$250 and two counts of Larceny Over

\$250 from a Person Aged 60 or Older. On April 19, 2002, Judge Ball adjudicated the defendant to be a Common and Notorious Thief and sentenced her to two and one half years in the House of Correction, committed, with two and one half years probation concurrent with her committed sentence and 10 years probation from and after her release.

The investigation in this case resulted in the defendant's admission to stealing a total of approximately \$1.6 million from 14 sets of client victims from July 1997 to August 2001. The defendant, who was disbarred in July 2001, specialized in debt consolidation. Many of the defendant's clients had entrusted her with funds to pay their taxes or creditors. In several instances, the defendant stole funds that clients had given her to invest on their behalf. The defendant admitted to diverting the bulk of her clients' money to her own personal accounts and using it for her own purposes, including significant cash withdrawals at casinos and repayments to other clients. The victims were an elderly Allston retiree, two Cape Cod women who formerly owned a bed and breakfast, a former Lynn-based corporation, the defendant's hairdresser, two Norfolk women, a former Malden bank employee, two chiropractors, two psychologists, an attorney, a real estate broker, a former stockbroker, an accountant, the estate of a Cambridge woman, and the estate of a Newton woman. In one incident, the defendant was retained by an elderly Allston man to prepare a will. The defendant instead stole more than \$280,000, \$250,000 of which she was supposed to place in a trust and \$30,000 of which she was to invest. The defendant also stole more than \$120,000 from the estate of a Cambridge woman and \$320,000 from the estate of a Newton woman.

The division provided victim advocacy and witness management to the 14 sets of victims. Victim advocacy included: ongoing notification of the case status; facilitating ongoing contact with the Clients' Security Board; assistance with state and federal resources to repair credit; guidance with completing victim impact statements; court accompaniment at the change of plea and sentencing; and assistance with the certification process to apply for notice of the defendant's release.

- Commonwealth v. Brian Delaney (Economic Crimes Division) The defendant, Brian Delaney, pleaded guilty on May 6, 2002 before Judge Charles Hely in Middlesex Superior Court to one count of Larceny Over \$250 after scheming his own grandfather into investing \$70,000 with him, only to take the money for himself. The defendant deposited his grandfather's funds into his own accounts and later used the money to buy merchandise, to make cash withdrawals, and to pay off his credit cards, instead of investing the money as promised. The case was aggravated by the fact that the defendant gave periodic updates to his grandfather reporting good news about his investment and creating a fake account and broker, while continuing to ask for and receive

more money to invest from the elderly victim. Judge Hely accepted the defendant's change of plea and sentenced him to one year of probation with the condition that \$70,000, representing the restitution owed to the victim, be paid that day.

The division provided victim advocacy to the elder victim by coordinating with the victim's adult son, who served as the elder's liaison at court appearances. In addition, the division informed the elder victim and his adult son, of the victim's statutory right to complete a victim impact statement and worked with the Middlesex Superior Court Probation Department to ensure that the victim was identified for restitution purposes.

- Commonwealth v. Percy Wayne Martin (Public Integrity Division) On May 16, 2002, the defendant, Percy Wayne Martin, pleaded guilty in Suffolk Superior Court before Judge Patrick Brady to the following charges: Larceny Over \$250 (two counts); Bank Fraud (five counts); Forgery (seven counts); Uttering (six counts); Larceny under \$250 (31 counts); and Identity Theft (15 counts). The defendant was immediately sentenced to two to three years in State Prison, one year concurrent in the House of Correction relating to the Larceny under \$250 charge, and two years concurrent in the House of Correction relating to the Identity Theft charge.

The investigation revealed that the defendant stole the identities of 15 individuals, 14 of whom were named Wayne Martin or a variation on that name. Many of the victims lived in Massachusetts, including Acushnet, Burlington, Dracut, Marshfield, Millbury, New Bedford, Townsend, and Watertown. Several victims lived out of state. The defendant used the victims' credit to purchase clothes at Saks Fifth Avenue and Neiman Marcus, to get credit cards and bank loans, and to steal money. The losses incurred by the victims totaled \$75,000.

The Martin case is significant from a victim/witness perspective. Identity Theft is the fastest growing white-collar crime in the United States. Like cyber crime, identity fraud is a crime without immediately apparent boundaries. Victims may reside all across the country and are not always aware of their victimization until contacted by law enforcement.

In the Martin case, the division provided victim advocacy and witness management to the 15 victims. The most obvious challenge was to coordinate and communicate effectively with the victims as 14 of them had the same name as the defendant or a variation of the name. The division provided ongoing notification of the case status, crisis counseling and referrals to assist the victims in repairing their credit, assistance with completing victim impact statements, and notification of disposition and post-conviction follow-up.

- **Commonwealth v. Douglas Chase** (High Tech & Computer Crime Division) On August 22, 2001, Massachusetts State Police executed a search warrant and arrested Douglas Chase, a high school biology teacher, as a result of an investigation relating to instant message conversations between Douglas Chase and a 15-year-old victim. The defendant, Douglas Chase, was arraigned in New Bedford District Court and charged with the following: (1) Dissemination of Harmful Material to a Minor (two counts); (2) Attempt to Commit a Crime, Dissemination of Harmful Material to a Minor (two counts); and (3) Open and Gross Conduct (one count). On June 18, 2002, the defendant pleaded guilty to all charges before Judge Daniel Toomey in Bristol Superior Court and was sentenced to two and one half years in the House of Correction with 30 days to serve, the balance suspended for five years.

This case was significant in that it illustrates the dangers faced by children while online. The division provided victim advocacy to the 15-year-old victim and her mother, who was a witness to the defendant's online actions. The division kept the victim and her family notified of the case status and explained the court process throughout the duration of the case. The division assisted the victim and her mother in completing a Victim Impact Statement which was read at the time of sentencing.

### STATISTICAL SUMMARY

Fiscal Year 2002 ushered in an exceptional year for the Victim/Witness Assistance Division, which responded to significant challenges to provide services to a high volume of victims and witnesses. Victim advocacy and witness management services were provided by the victim/witness advocates on 66 cases across the Commonwealth. The case breakdown is as follows:

REFERRAL SOURCE	NUMBER OF CASES
Economic Crimes Division	17
Consumer Protection Prosecution Unit	3
High Tech and Computer Crime Division	12
Public Integrity Division	7

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Environmental Crimes Strike Force	7
Special Investigations and Narcotics Division	9
Appeals Division	6
Public Protection Bureau, Civil Rights Division	1
Conflict Cases	4
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<b>TOTAL</b>	<b>66</b>

## SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

During Fiscal Year 2002, members of the division were involved in significant activities and initiatives in an effort to respond to issues of critical import. In the wake of September 11, 2001, advocates responded to family survivors who called for guidance and support. The division coordinated with the Attorney General's Victim Compensation and Assistance Division, the Massachusetts Office of Victim Assistance, each of the 11 District Attorneys' Offices, and collateral service providers to identify resources and referrals. The Director of the Division, together with the Director of the Victim Compensation and Assistance Division, attended a Family Assistance Meeting on October 19, 2001 hosted by Senator Ted Kennedy to provide information and support to family survivors and loved ones.

In the wake of the clergy abuse scandal, the division also responded to 67 calls from survivors of clergy abuse. Again, the division coordinated with the Massachusetts Office of Victim Assistance, each of the 11 District Attorneys' Offices, and collateral service providers to identify resources and referrals. The Director of the Division sat on the Attorney General's Elder Strike Force to respond to elder inquiries and to create solutions. The division also provided ongoing in-house consultation to prosecutors, investigators, and state troopers by screening and responding to duty calls and correspondence from the public when victim/witness issues were identified.

## OUTREACH, EDUCATION, AND TRAINING

During Fiscal Year 2002, the division's advocates maintained numerous outreach efforts in community activities and both taught and attended training classes inside and outside of the Office of the Attorney General, including:

- Meeting with the Clients' Security Board of the Supreme Judicial Court to facilitate an educational consult so that the division could better advise victims of their recourse in cases of fiduciary embezzlement.
- Attending the New England Conference on Financial Crimes, Providence, Rhode Island, which was sponsored by the United States Attorneys for the Districts of Rhode Island, Connecticut, New Hampshire, Massachusetts, Maine, and Vermont.
- Serving as an Elder Advocate on the Attorney General's Elder Strike Force.
- Attending the Annual Massachusetts Councils on Aging Conference, Falmouth, MA.
- Serving as the Attorney General liaison at bimonthly meetings of the Boston Area Sexual Assault Coalition at Massachusetts General Hospital.
- Serving as the Attorney General liaison on the domestic violence subgroup of the Massachusetts District Attorneys Association.
- Attending regular meetings for statewide Victim Witness Directors sponsored by the Massachusetts District Attorneys Association.
- Attending bimonthly meetings of the Victim and Witness Assistance Board chaired by Attorney General Tom Reilly.
- Attending 17 educational training seminars across the Commonwealth relating to victim/witness issues.
- Conducting training related to the implementation of the Victim Rights Law and the role of the Victim/Witness Assistance Division to the Victim Services Coordinator, Massachusetts Office for Victim Assistance, and the Criminal Bureau summer interns.
- Volunteering at the Paul McLaughlin Center, reading to youth as part of the Youth Empowerment Skills Project.

- Attending the Annual Victim Rights Conference in April 2002 sponsored by the Massachusetts Office for Victim Assistance, the Victim and Witness Assistance Board, Attorney General Tom Reilly, and the Massachusetts District Attorneys Association.
- Attending the National Organization for Victim Assistance's 27th Annual Conference, Edmonton, Alberta, Canada.

## SPECIAL INVESTIGATIONS AND NARCOTICS DIVISION

The Special Investigations and Narcotics (SI&N) Division coordinates and prosecutes a variety of complex, multi-jurisdictional criminal cases. The division also proactively investigates traditional criminal enterprises — including so-called organized crime families and large-scale drug trafficking organizations — as well as non-traditional criminal organizations such as street gangs and armed robbery rings. A priority of the division is to identify and prosecute individuals and groups involved in the illegal sale or possession of firearms. SI&N prosecutors are also responsible for providing assistance in the drafting of legislation pertaining to electronic surveillance, racketeering and corruption, narcotics, firearms, and child protection. Division members are encouraged to participate in the conception and implementation of community education and outreach programs.

The SI&N Division, through its Asset Forfeiture Unit, initiates and pursues civil and criminal forfeiture and nuisance actions of property related to the sale, distribution, and facilitation of drug-related offenses as well as gaming violations. Funds recovered by the Unit are disbursed in accordance with the Commonwealth's forfeiture laws.

Among the general categories of crimes the SI&N Division investigated and/or prosecuted during Fiscal Year 2002 were the following: armed robbery, narcotics trafficking and related offenses, firearms trafficking, possession of large-capacity weapons and related firearms offenses, armed career criminal violations, larceny of motor vehicles, larceny of construction equipment, gaming, extortion and loan-sharking, habitual criminal offenders, and a variety of conflict cases from District Attorneys' Offices across the state.

Attorneys, State Police Officers, and investigators assigned to the SI&N Division also continued to work with and provide technical, legal, and other forms of investigative support and assistance to federal, state, and local law enforcement agencies. These agencies included the Drug Enforcement Administration; the Bureau of Alcohol, Tobacco and Firearms; the Federal Bureau of Investigations; the United States Customs Service; the Governor's Auto Theft Task Force; the Costa Rican Police; the Department of Corrections; District Attorneys' Offices; and various state and local police departments and task forces

throughout the Commonwealth and, in some circumstances, across the country. These joint undertakings included investigations of large-scale drug distribution and money laundering organizations, organized larceny rings, and armed career criminals.

Members of the division for all or part of Fiscal Year 2002 included William F. Bloomer, Division Chief; Kelly Burns; Aloke Chakravarty; Carole Conley; Joanna Kennefick; Alexandra Moffatt; Eileen O'Brien; Peter Paulousky; Mary Phillips; Peter Russell; Matthew Shea (Western Massachusetts Division); and Karen Wells. Approximately 10 Massachusetts State Troopers are assigned to the SI&N Division within the Attorney General's Office. During part of Fiscal Year 2002, then-Captain Mark Delaney oversaw the command of all State Police Detectives assigned to the Attorney General's Office, including SI&N troopers. After Captain Delaney's promotion to Major, Lieutenant Stephen Matthews assumed the role of detective supervisor. Lieutenant Francis Matthews, with Lieutenant Thomas Coffey and Sergeant Richard Prior, formed the central core of the remaining command structure for SI&N troopers.

## SIGNIFICANT CASE SUMMARIES

- Commonwealth v. Dennis Garafolo (Springfield Superior Court); Commonwealth v. Richard Green (Springfield Superior Court); Commonwealth v. Kyle Washington (Springfield Superior Court); Commonwealth v. Aaron Thomas (Springfield Superior Court); Commonwealth v. Charles Bowes (Springfield District Court) During Fiscal Year 2002, State Police and prosecutors assigned to the SI&N Division commenced an investigation into the larceny and resale of heavy construction equipment in the Springfield area. The focus of the investigation quickly enlarged to include drug dealing and illegal gaming activities by individuals involved in organized crime. Investigators tapped three cellular telephones and one residential telephone during the course of the 11-month investigation. In addition, an undercover trooper infiltrated one segment of this group and purchased a half-dozen stolen construction equipment pieces, including one Caterpillar Skidsteer (stolen from a Springfield Basketball Hall of Fame construction site), a John Deere Skidsteer and trailer, a New Holland Skidsteer, a Caterpillar Backhoe, and a Bobcat Skidsteer. The undercover trooper also purchased over 200 grams of cocaine from several targets of the investigation, and he participated in illegal poker games played on video machines in commercial establishments in the Greater Springfield area. In late September, State Troopers assigned to the Attorney General's Office, in conjunction with State Troopers assigned to the Special Services Unit and the Hampden County District Attorney's Office, executed nearly 60 search warrants in and around Springfield and seized over 125 video gaming machines. Prosecutors from the Attorney General's SI&N Division and the Hampden County District

Attorney's Office brought gaming, larceny, and drug trafficking charges against a number of individuals as a result of this coordinated effort.

- Commonwealth v. Philip O'Neil (Middlesex and Suffolk Superior Courts); Commonwealth v. Kevin O'Neil (Middlesex Superior Court); Commonwealth v. Paul Allen (Middlesex Superior Court); Commonwealth v. Jason Souza (Middlesex Superior Court); Commonwealth v. Jeffrey Houlihan (Middlesex, Suffolk, and Essex Superior Courts); Commonwealth v. Nelson Baez (Middlesex Superior Court); Commonwealth v. Norberto DeJesus (Middlesex Superior Court); Commonwealth v. Larry Mulcahy (Essex Superior Court); Commonwealth v. Sean Noonan (Essex Superior Court); Commonwealth v. James Garvey (Suffolk Superior Court); Commonwealth v. Daniel Feeney (Somerville District Court); Commonwealth v. A Juvenile (Cambridge District Court) In 2001, police and prosecutors were confronted with a rash of pharmacy robberies targeting the theft of OxyContin pills — a highly addictive, opiate painkiller. Facing a public safety and public health emergency due to the escalating numbers of pharmacy robberies, Attorney General Reilly formed the OxyContin Task Force in August 2001. The Task Force consisted of members of the State Police, the Boston Police, local police departments, federal law enforcement agencies, and prosecutors assigned to the SI&N Division and District Attorney's Offices throughout Eastern Massachusetts. The initial goal of the Task Force was to identify and apprehend the most violent repeat offenders who, if not stopped, posed a significant risk of killing or seriously injuring someone. These perpetrators, after carefully casing targeted pharmacies, committed the robberies in organized groups armed with guns while disguising their physical features. The Task Force spent several months actively gathering intelligence through a variety of means, including electronic and physical surveillance, undercover police work, and cultivating informants. This process led Task Force members to identify several loosely affiliated groups who resided in or had ties to Charlestown. By the end of March 2002, Task Force members had arrested and charged 12 individuals in connection with six armed robberies of pharmacies in Suffolk, Middlesex, and Essex counties. These individuals were charged with offenses ranging from armed robbery while masked to trafficking in oxycodone to armed career criminal violations. In addition, Task Force members thwarted pharmacy robberies in Medford and Arlington by infiltrating the groups with undercover police agents before the robberies could take place. Firearms, including a Tec 9 large-capacity weapon and handguns with obliterated serial numbers, knives, a bullet-proof vest, masks, gloves, thousands of dollars, and hundreds of OxyContin pills and other narcotics were seized by Task Force members. The results of Attorney General Reilly's task force initiative represented an outstanding coordinated effort between state and local law enforcement agencies to combat a newly evolving threat to the public.

• Commonwealth v. Monica Reyes (Suffolk and Middlesex Superior Courts); Commonwealth v. Mario Reyes, Jr. (Suffolk and Worcester Superior Courts); Commonwealth v. William Torres (Suffolk and Worcester Superior Courts); Commonwealth v. Jose Rivera (Suffolk Superior Court); Commonwealth v. James Abreus (Suffolk Superior Court); Commonwealth v. Estaban Palacios (Suffolk Superior Court); Commonwealth v. Gilberto Cruz (Middlesex Superior Court); Commonwealth v. Faber Aldana (Middlesex Superior Court) From July through October 2001, Massachusetts State Police and prosecutors assigned to the Attorney General's Office, in conjunction with the federal Drug Enforcement Administration, conducted a wiretap investigation into a heroin, cocaine, and MDMA (ecstasy) importation and distribution organization operating in the Greater Boston area. The reach of the organization extended from Boston to Costa Rica. During a 45-day period, investigators monitored conversations over five different telephones associated with this organization pursuant to court orders. Narcotics were seized from targets by means of controlled and undercover purchases of heroin and MDMA (ecstasy), interdiction of narcotics coming from Costa Rica for distribution in the Boston area, interdiction of narcotics coming from New York City for distribution in the Boston area, a motor vehicle stop based on information gleaned from the wiretap, and the execution of nine search warrants. The narcotics seizures in this investigation, dubbed "Operation Colombian Gold", totaled approximately 20 kilograms of cocaine, four kilograms of heroin, 1,000 MDMA (ecstasy) pills, firearms and ammunition, and thousands of dollars representing illegal drug proceeds. The Massachusetts investigation culminated in the execution of search warrants on November 2, 2001, a day after the arrest of two targets as they were bringing approximately 700 grams of cocaine back to the Boston area from New York City. Eight individuals were arrested in Massachusetts. Additional arrests were made in New York and Costa Rica, and are being prosecuted by their respective state agencies. This investigation exemplified the successful cooperative efforts among separate law enforcement entities working together with the Attorney General's Office to attain one goal.

• Commonwealth v. Sambo Sok (Middlesex Superior Court); Commonwealth v. Vinchet Som (Middlesex Superior Court); Commonwealth v. Dorath Dou (Middlesex Superior Court); Commonwealth v. Joshua Rodriguez (Middlesex Superior Court); Commonwealth v. Two Juveniles (Lowell District Court) In Fiscal Year 2002, the Governor's Auto Theft Task Force and the Lowell Police Department enlisted the assistance of prosecutors assigned to the SI&N Division in undertaking an effort to thwart the escalating problem of car theft in Greater Lowell. Investigators and prosecutors assigned to "Operation Baywatch" equipped an undercover auto service garage with audio and visual recording devices after spreading word on the street that it was a chop shop receptive to purchasing stolen vehicles. Six people were charged in connection

with a stolen car ring after investigators purchased nearly one dozen stolen vehicles from them. Seventy-six indictments against these individuals were returned in Fiscal Year 2002 with charges ranging from being a common and notorious thief to illegal possession of a master key for certain types of motor vehicles. Two individuals have already pleaded guilty to charges, and two others were apprehended after fleeing the Commonwealth.

- Commonwealth v. Dolan McNamee (Hampden Superior Court); Commonwealth v. James Doyle (Hampden Superior Court); Commonwealth v. Brian Damato (Hampden Superior Court); Commonwealth v. Michael Shelton (Hampden Superior Court) Beginning in 1997, a federal and state task force infiltrated two outlaw motorcycle gangs — the Hells Angels Pittsfield Club and the Longriders of Ludlow — with a cooperating witness and an undercover state trooper. Over the next few years, the undercover trooper currently assigned to the Attorney General's Office and the cooperating witness made several purchases of trafficking quantities of cocaine from members of both motorcycle gangs. In Fiscal Year 2002, four individuals were indicted in connection with these drug sales. Within several months, prosecutors in the SI&N Division secured guilty pleas from three defendants in Hampden Superior Court. The fourth defendant awaits trial.
- Commonwealth v. \$35,133.95, One 1999 GMC Denali and One Sea Ray Power Boat (Middlesex Superior Court) Following a wiretap investigation in 1999 targeting an extensive OxyContin and ecstasy distribution ring, the Asset Forfeiture Unit initiated several civil forfeiture actions against personal property and drug profits held by the targets of that investigation. After extensive pre-trial litigation, the head of that drug distribution organization pleaded guilty to a mandatory minimum seven years in state prison and agreed to forfeiture of his ill-gotten gains.
- Commonwealth v. Frank Fister (Worcester and Suffolk Superior Courts); Commonwealth v. Ronald Cavaliere (Worcester Superior Court) These cases illustrate the typical work done on a daily basis by investigators and prosecutors assigned to the SI&N Division. In the spring of 2002, State Troopers assigned to the SI&N Division received information from the New Hampshire State Police informing them that a large quantity of marijuana would be delivered to Cavaliere's residence in Milford, Massachusetts. Upon corroborating this information through surveillance, troopers seized over 350 pounds of marijuana from Fister's vehicle as well as an additional 110 grams of cocaine and several thousand dollars. During the booking process, Fister made several statements that alerted investigators to the possible removal of evidence from his realty business on Beacon Hill in Boston. Follow-up investigation resulted in the seizure of an

additional five pounds of cocaine and six pounds of marijuana that had been removed from Fister's office by an accomplice.

- United States v. Carlos Bello (U.S. District Court, Boston, Massachusetts) From September 27, 1999 through January 10, 2000, 40 wiretap warrants were issued by a Massachusetts Superior Court judge authorizing troopers and prosecutors in the division to secretly intercept and record certain wire communications occurring over a variety of electronic devices in the Greater Lawrence area. At the conclusion of the wiretap investigation, a federal grand jury indicted Carlos Bello and Miraldo Lizardo, an Essex County Deputy Sheriff, for conspiracy to distribute cocaine. In February 2002, Bello pleaded guilty in federal court to conspiring to distribute 49 kilograms of cocaine. He was sentenced to 10 years in Federal Prison. His co-defendant, Lizardo, presently is awaiting trial.
- Commonwealth v. George Lubell (Essex and Suffolk Superior Courts) Following an extensive wiretap investigation, George Lubell, a former Corrections Officer, pleaded guilty to a variety of offenses including Illegal Possession of a Firearm and Ammunition and Trafficking in an Opiate Derivative (OxyContin). He was sentenced to a mandatory minimum of five to seven years in State Prison. The case represented excellence in prosecution and police work in light of the fact that the trafficking charge was entirely based on circumstantial evidence and a trafficking quantity of OxyContin was not seized from the defendant.

## STATISTICAL SUMMARY

### CASE ANALYSIS

Felony Arrests	75
Criminal Cases Initiated	81
Civil Forfeiture Cases Initiated	24
Criminal Cases Disposed*	75
Civil Forfeiture Cases Disposed*	31

\* Some were opened in prior fiscal years.

At any given time, the division generally has in excess of 100 cases pending in various courts throughout the Commonwealth, over 15 ongoing investigations, and a handful of post-trial motions that require written responses and court appearances. During the fiscal year, State Police assigned to the SI&N Division made approximately 75 felony arrests. Prosecutors in the division in turn successfully disposed of 75 pending cases in the Massachusetts Superior and District Courts (62 of which were initiated in prior fiscal years) while initiating approximately 81 new cases in those same courts. Of the number of drug cases investigated by the division in Fiscal Year 2002, about 15% of these involved two controlled substances rapidly growing in popularity among young adults: oxycodone, a highly addictive painkiller (the active ingredient in pharmaceutical OxyContin), and Methyleneedioxy-N-Methylamphetamine (MDMA), otherwise known as the designer drug ecstasy. The remaining percentage of narcotics cases included the more common street drugs such as heroin, cocaine, and marijuana. The vast majority of these cases involved trafficking quantities of these drugs.

During this fiscal year, State Police assigned to the SI&N Division seized 10 guns ranging from an Intratec 9 mm semi-automatic firearm to several handguns with obliterated serial numbers. Based upon these seizures as well as undercover purchases of weapons, prosecutors in the SI&N Division charged 22 individuals with a variety of firearms offenses including armed career criminal violations, possession of large-capacity weapons, and receiving firearms with obliterated serial numbers.

In addition to prosecuting pending criminal cases, Assistant Attorneys General in the SI&N Division responded to six post-trial motions. These motions, filed by convicted felons, sought new trials or sentence reductions. Of the number of post-trial motions filed, four were denied and two remain outstanding.

During this fiscal year, the Asset Forfeiture Unit initiated 24 new civil forfeiture actions and concluded 31 actions involving money, cars, motorcycles, and jewelry. By way of example, the Asset Forfeiture Unit initiated several civil forfeiture actions involving a number of automobiles used to facilitate the distribution of narcotics including one 2000 Jaguar XJ, one 1998 Chevrolet Tahoe, one 1998 Mitsubishi Galant, and one 1997 Mazda 626. In addition, the Asset Forfeiture Unit initiated a civil forfeiture action against one parcel of land and a building in Milford, Massachusetts. This real property was used to store large quantities of cocaine and marijuana for further distribution in Massachusetts and New Hampshire.

## WIRETAP ANALYSIS

Wiretap Warrant Applications	15
Wiretap Warrants Received	15
Devices Tapped	9
One-Party Consent Warrant Applications	60+
One-Party Consent Warrants Received	60+

A significant tool that the division utilized to penetrate and dismantle complex illegal enterprises during Fiscal Year 2002 was electronic surveillance. Over the past year, troopers assigned to the division have on numerous occasions equipped themselves with electronic body wires, pursuant to so-called Blood warrants, to intercept and record criminal conversations with unsuspecting targets. Additionally, from July 2001 through June 2002, the SI&N Division executed 15 court-authorized wiretap warrants (excluding one-party consent / Blood warrants). These warrants authorized law enforcement officers to intercept, monitor, and record criminal communications occurring over several cellular and residential telephones. These electronic surveillance measures, coupled with traditional investigative techniques, have proven invaluable in securing the convictions of individuals with ties to a variety of sophisticated criminal enterprises. Because of their considerable expertise in this area, attorneys in the division are frequently asked to assist police officers and fellow prosecutors in the law of search and seizure and electronic surveillance.

## SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

Assistant Attorneys General assigned to the SI&N Division continued to provide service and assistance both in and out of the office that exceeded the scope of traditional prosecutorial responsibilities. Some of these extracurricular contributions included service on the Attorney General's Racial Profiling Working Group; the Attorney General's Children's Protection Project — New Initiatives; and the Attorney General's Ballot Initiative Certification Group. In addition, members of the division drafted a new wiretap statute — designed to address developments in technology and the proliferation of a broader base of criminal offenses — for legislative consideration.

As noted above, in August 2001 Attorney General Reilly formed the OxyContin Task Force out of state and local law enforcement agencies in order to combat the escalating number of pharmacy robberies targeting the drug OxyContin. In addition to investigating and prosecuting these armed robberies, Task Force prosecutors met with members of the Massachusetts Retailers Association, including representatives from chain and independent pharmacies, to discuss public safety issues. Task Force prosecutors also met with representatives from Purdue Pharma, the manufacturer of OxyContin, to discuss public health and safety concerns. Finally, one Task Force prosecutor became Attorney General Reilly's representative on the National Association of Attorneys General Prescription Drug Task Force.

During Fiscal Year 2002, attorneys in the SI&N Division were also required to act as point persons for the office on a variety of topics that require specialized knowledge in certain areas of law. For instance, prosecutors in the division provided advice and assistance to attorneys and police officers across the state in rendition matters. In addition, an assistant attorney general screened all public record inquiries directed to the division. Prosecutors also served as the division's intern coordinators, who in that capacity supervise and monitor the progress of law student interns assigned to the division.

## OUTREACH, EDUCATION, AND TRAINING

Members of the division attended trainings both inside and outside the office during Fiscal Year 2002 in an effort to keep abreast of important current issues and trends in the law. These trainings encompassed a variety of topics, including ethics, anti-discrimination, and trial advocacy techniques. Some of the trainings attended by assistant attorneys general in the division included Mile's Trial Advocacy Training; Daubert/Lanigan Roundtable Discussion; the NAC's Computer Forensics and Cyber Crimes Investigations Training; the BBA's Cutting Edge Issues in Criminal Law; the Probation Department's Alternative Sentencing Training; The Organized Crime and Drug Enforcement Task Force Conference in New Hampshire; and an internal training on Handling High Profile Prosecutions.

Two assistant attorneys general in the division served as faculty for (1) the National Association of Attorneys General, Trial Practice Academy, and (2) the National Advocacy Center for the National District Attorneys Association. Attorneys in SI&N also participated in the Citizen Schools Mock Trial Program, a community outreach program for youths in the inner city, in the fall of 2002.

## ECONOMIC CRIMES DIVISION

The Economic Crimes Division (ECD) investigates and prosecutes all types of private-sector, white-collar, and economic crime in state courts across the Commonwealth. The division is charged with stemming the egregious effects of private-sector white-collar offenders within the state through both pro-active prevention and aggressive prosecution. The cases handled by the division vary in size — from the \$50,000 theft from a single elderly victim to the multi-million-dollar theft from a large corporation — but all are designed to have a significant impact, whether through deterring future criminal activity or incapacitating a particularly serious offender. The goal of the division is not only to indict and convict guilty felons, but also to assist the public and private sectors in creating systemic change in order to prevent fraud.

The Economic Crimes Division consists of a specialized team of criminal prosecutors and one legal secretary, all of whom have the collective expertise in the following areas of criminal law: (1) fiduciary embezzlement, (2) complex financial organizational frauds, (3) securities violations, and (4) tax offenses. In each of these areas, the prosecutors lead investigative teams made up of civilian investigators from the Financial Investigations Division of the Criminal Bureau and/or State Police Detectives.

The Economic Crimes Division receives referrals from state and federal agencies, as well as judges, attorneys, private parties, and police departments throughout the Commonwealth.

The division continues to work closely with such offices and agencies as the Board of Bar Overseers, the Client Security Board, the Criminal Investigations Bureau of the Department of Revenue, the Secretary of the Commonwealth, the United States Attorney's Office, and various District Attorneys' Offices across the state.

The division underwent significant personnel changes during Fiscal Year 2002, with Assistant Attorney Generals Lori Balboni, Steven Prunier, and Mary Ruppert leaving the office. The members of the division during part or all of the fiscal year consisted of Carol Starkey, Division Chief; Lori Balboni; Olivia Blanchette; Mark Mulligan; Molly Parks; Steven Prunier; and Mary Ruppert.

## SIGNIFICANT CASE SUMMARIES

- **The Treasury Cases** (Suffolk Superior Court) The Criminal Bureau's investigation of a series of related larcenies from the Treasurer's Office, which was staffed in large part by ECD attorneys, wrapped up this year with guilty pleas and jail sentences for six defendants and one acquittal. As a result of the Treasury investigation, the Attorney General's Office has recovered or received commitments for the return of more than \$8 million stolen from the Treasury.

These cases involved indictments against seven individuals, which alleged that eight different criminal schemes were committed involving thefts from the Treasurer's Office between May 1992 and February 1998. The total amount of money stolen as a result of these alleged schemes was approximately \$9.4 million. The majority of these schemes involved thefts from the Treasury's Unpaid Check Fund (the UPCF), through a combination of the filing of phony heirfinder claims and kickback arrangements involving inside employees to the Treasurer's Office and outside individuals operating as heirfinders.<sup>2</sup> Finally, there were further indictments that alleged that money was stolen from the Teller's Cage or vault area of the Treasurer's Office located at One Ashburton Place.

The following three defendants pleaded guilty and were sentenced in the past year:

Martin Robbins admitted that he and co-defendant John Trischitta, the former supervisor of the UPCF, engaged in a scheme whereby Trischitta would provide Robbins with inside information and preferential treatment that would assist Robbins in making claims to the UPCF. In exchange, Robbins paid Trischitta one-third of all of the profits from the claims he submitted to the UPCF. The two men submitted in excess of 150 claims in a little over half of a year, highlighted by a false claim Robbins submitted in November 1998 to Trischitta for over \$6.5 million in unclaimed funds. Robbins pleaded guilty to forgery, uttering, bribery, and conspiracy to commit larceny and bribery. He was sentenced to two years in the House of Correction followed by a second sentence of two years in the House of Correction and was ordered to pay restitution of \$170,000.

Ronald Borino admitted that he worked with former Deputy Treasurer Robert Foley, Attorney Richard C. Arrighi, and Trischitta to steal \$1.6 million from the UPCF. He pleaded guilty to Conspiracy to Conceal Stolen Property, to Concealing Stolen Property, and to Making a

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<sup>2</sup> Heirfinders are people in the business of locating payees of unpaid checks in the UPCF and facilitating the payment to them of the money they are owed from these unpaid checks.

False Entry as a Bank Trustee or Agent. He was sentenced to two and one half years in the House of Correction and ordered to pay restitution of \$418,981.87.

Richard Arrighi pleaded guilty to Conspiracy to Aid in the Concealment of Stolen Property, to Aiding the Concealment of Stolen Property, to Failure to File Fiduciary Tax Returns, and to Filing False Tax Returns. He was sentenced to three years in the House of Correction and five years of probation and ordered to pay \$540,000 in restitution to the Commonwealth.

The following three defendants pleaded guilty last year<sup>3</sup> and agreed to suspend their sentencing until providing testimony in the above prosecutions:

Thomas Ciliberto admitted that, after being approached by then-Deputy Treasurer Robert Foley, he started an heirfinder business and then submitted over 160 claims to the UPCF and shared the proceeds with Foley and Trischitta, in return for the two Treasury employees providing Ciliberto with inside information about large unpaid checks in the UPCF and helping Ciliberto prepare, submit, and process claims. Ciliberto pleaded guilty to Larceny Over \$250, two counts of Bribery, and Conspiracy to Commit Larceny and Bribery, and was sentenced to two and one half years in the House of Correction, with six months to serve and the balance suspended for two years with, from, and after probation for three years. He was also ordered to pay \$100,000 in restitution in addition to the \$306,000 he had already paid.

Robert Foley, the former Deputy Treasurer, pleaded guilty to two counts of Embezzlement by a Treasury Employee, Bribery, Conflict of Interest, Concealing Stolen Property, Receiving Stolen Property, and Conspiracy to Commit Larceny from the Treasury, Conceal Stolen Property and Commit Bribery. He was sentenced to five years to five years and one day in State Prison, with three years of probation from and after the completion of the prison sentence, and was ordered to pay \$909,033.37 in restitution.

John Trischitta, the former supervisor of the Unpaid Check Fund, pleaded guilty to Embezzlement by a Treasury Employee, Bribery, Conflict of Interest, and Conspiracy to Commit Larceny from the Treasury and Bribery. He was sentenced to two consecutive two-year sentences in the House of Correction.

- **Commonwealth v. Shirley Hoak** (Middlesex Superior Court) The defendant, a disbarred attorney, pleaded guilty to stealing over \$1.6 million of her clients' money. Among her victims was an elderly man who hired her to prepare a will leaving the bulk of his estate — some \$250,000

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<sup>3</sup>A seventh defendant was found not guilty after a jury trial.

— to two former neighbors. Hoak instead persuaded her client, who lived in a single room in an assisted-living facility, to put all of his money in a trust to benefit those neighbors and then stole the money from the trust to benefit herself. Hoak pleaded guilty to three counts of Larceny Over \$250, and two counts of Larceny Over \$250 From a Person over 60, was adjudicated a common and notorious thief, and was sentenced to serve two and one half years in the House of Correction followed by 10 years of probation, during which time she is to pay restitution.

- Commonwealth v. Ziad Shahin (Essex Superior Court) The defendant was convicted after a jury trial on charges of Larceny Over \$250 in relation to his diversion of tens of thousands of dollars entrusted to him to invest by the elderly retired victim. He was sentenced to two years in the House of Correction with six months to be served on weekends and the balance suspended for three years, during which time he is to pay restitution.
- Commonwealth v. Leo Burns and Thomas Ribaga (Barnstable Superior Court) The defendants — financial advisors — perpetrated a string of larcenies and securities fraud in multiple counties. They both pleaded guilty in the middle of a bench trial that involved removing the Court to a nursing home to take the testimony of an 83-year-old victim. Burns pleaded guilty to nine counts of Larceny Over \$250 and four counts of Unlawful Sale of a Security and was sentenced to two years in the House of Correction, with a year to serve and the balance suspended for nine years. He was also ordered to pay restitution of \$144,838.62. Ribaga pleaded guilty to 10 counts of Larceny Over \$250 and four counts of Unlawful Sale of a Security and was sentenced to 10 years of probation. He was also ordered to pay restitution of \$312,838.62.
- Commonwealth v. John J. Wilbur (Suffolk Superior Court) Wilbur allegedly submitted 30 separate income tax returns to the Commonwealth over a number of years in various names, garnering some \$40,000 in tax refunds to which he was not entitled. He has been indicted on 30 counts of Filing a False Claim Against the Commonwealth and two counts of Identity Fraud.
- Commonwealth v. Sean Murphy (Suffolk Superior Court) This defendant attempted to take advantage of the sex-abuse allegations surrounding the Catholic Church by falsely claiming that when he was a young boy, a priest sexually assaulted him. He supported this claim with documents that he manufactured, and then demanded a cash settlement from the Church. He also asked four other individuals to make similar claims. The defendant pleaded guilty to two counts of Attempted Larceny, and Conspiracy to Commit Larceny and four counts of Solicitation to Commit Larceny and was sentenced to 23 months in the House of Correction and three years of probation.

In addition, an ECD attorney was the lead prosecutor in the prosecution of MRP Site Development for various environmental crimes. The defendant ultimately pleaded guilty in Middlesex Superior Court to 40 counts of failure to notify of releases of hazardous materials, was placed on probation for four years, and was ordered to pay a \$1 million fine and \$419,802.50 in restitution.

## STATISTICAL SUMMARY<sup>4</sup>

ECD focuses on preventing, investigating, and prosecuting fraud in five areas: fraud within organizations — be it the government, a business, a charity, or a union; embezzlement by attorneys and other fiduciaries; securities and investment fraud (including embezzlement by financial advisers); tax fraud; and attempts to con consumers and businesses (including identity fraud). The following chart summarizes the case referrals that ECD screened for possible investigation and prosecution during Fiscal Year 2002, the number of cases of individuals indicted, and the number of individuals who were convicted in each of those five prosecution categories.

CASE TYPE	NUMBER OF CASES SCREENED	NUMBER OF INDIVIDUALS CHARGED	NUMBER OF INDIVIDUALS CONVICTED
Fraud Within an Organization	22	1	7
Embezzlement by Attorneys and Other Fiduciaries	21	1	3
Securities and Investment Fraud <sup>5</sup>	8	2	3
Tax Fraud	10	0	1
Attempts to Con Consumers and Businesses	23	1	1
<b>TOTAL</b>	<b>84</b>	<b>5</b>	<b>15</b>

<sup>4</sup>Some of the cases charged this year remain pending, just as some of the cases resolved this year were charged previously.

<sup>5</sup>Including embezzlement by financial advisers.

ECD prosecutors also devoted substantial time to assisting two large and ongoing bureauwide Grand Jury investigations.

## **SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES**

ECD attorneys have worked closely with staff from the Executive Bureau to draft new legislation in many areas, including changes to the identity fraud statute and the creation of a money laundering statute. In other areas, such as with the Electronic Signature Bill, ECD attorneys have been asked to provide comments based on their unique expertise.

## **OUTREACH, EDUCATION, AND TRAINING**

Throughout the year, ECD attorneys regularly shared their expertise in the investigation and prosecution of financial crimes by offering training sessions within the Office of the Attorney General, by serving as panelists and speakers for a number of programs organized by outside entities, and by participation in the management of the Boston and Massachusetts Bar Associations' Criminal Law Sections. Highlights included: presenting a lecture to the Boston Bar Association Criminal Law Section on Diminished Capacity in White Collar Cases, planning and presenting internal trainings on handwriting analysis and the use of business records, serving as a critiquer for the National Institute for Trial Advocacy, and speaking at a conference of the Ages Elder Strike Force. ECD attorneys also continued to develop their expertise and educate others to the special mission of the division by attending trainings devoted to their professional development, including the New England Conference on Financial Crimes, the Massachusetts Continuing Legal Education trial advocacy program for prosecutors, and various internal trainings.

## **ENVIRONMENTAL CRIMES STRIKE FORCE**

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The Massachusetts Environmental Crimes Strike Force (ECSF) is a unique inter-agency enforcement tool used in the investigation and prosecution of the Commonwealth's environmental enforcement efforts. Through the cooperation of the Attorney General, the Secretary of Environmental Affairs, the Department of Environmental Protection (DEP), and the Department of Fisheries, Wildlife and Environmental Law Enforcement, the ECSF brings prosecutorial, technical, and police resources under a single umbrella. The ECSF thus provides the legal, scientific, and investigative expertise necessary to identify environmental violations, evaluate their impact on public safety and the environment, and develop the evidence necessary

to prosecute environmental crimes. The types of cases prosecuted by the ECSF include illegal treatment and disposal of hazardous waste; water pollution; failure to notify of hazardous material releases; air pollution cases resulting from burning of wastes and illegal removal of asbestos; and illegal dumping of, among other things, abandoned drums and tire piles.

In Fiscal Year 2002, the ECSF Division staff included Paul Molloy, Division Chief; Officer Patrick Haley; Nicholas Kosiavelon; Lieutenant Gail Larson; Officer Michael Moore; Jenny Prokopovich; and Sergeant Michael Sweeney.

## SIGNIFICANT CASE SUMMARIES

Highlights of cases handled by the Environmental Crimes Strike Force in Fiscal Year 2002 included:

- Commonwealth v. MRP Site Development, Inc. (Middlesex Superior Court) MRP pleaded guilty to 40 counts of failure to notify of releases of hazardous material. MRP received four years probation, was fined \$1 million, and paid \$419,802.50 in restitution to DEP and Massachusetts Highway Department. MRP was ordered to clean up three additional sites with an estimated clean-up cost of \$500,000. As a result of our prosecution, MRP has already incurred an additional \$1 million in clean-up costs.
- Commonwealth v. Piconics, Inc. (Lowell District Court) Piconics, Inc. pleaded guilty in January 2002 to three counts of violating the Clean Water Act by discharging pollutants to the groundwater. Piconics was sentenced to two years probation and ordered to pay a \$75,000 fine.
- Commonwealth v. Andrew Krook (Leominster District Court) Krook pleaded guilty in December 2001 to illegally discharging gasoline into storm drain. He was sentenced to one year probation, with the condition of probation that he pay \$34,650.09 in restitution to DEP and \$6,477.36 in restitution to the Town of Leominster at the time of the plea, to cover the clean-up costs incurred.
- Commonwealth v. Edward Defeudis (Worcester Superior Court) An investigation arose from allegations that Defeudis demolished a building without notifying the DEP or removing asbestos materials prior to demolition. Defeudis pleaded guilty to one count of Clean Air Act violations and was fined \$25,000.

- Commonwealth v. L. Sanders Corbit (Middlesex Superior Court) Corbit was accused of fraudulent site assessments submitted to banks in connection with real estate transactions. The defendant pleaded guilty, during trial, and was sentenced to two years in the House of Correction suspended, two years probation, and ordered to pay \$20,000 restitution and not to work in the environmental consulting industry.
- Commonwealth v. James Keeley (Norfolk Superior Court) Keeley, a licensed contractor, was accused of improper asbestos abatement. Dry asbestos removals were performed on at least two occasions. Keeley was charged with Clean Air Act violations and sentenced to two years probation and \$20,000 restitution after pleading guilty.
- Commonwealth v. Efrain Ayala (Middlesex and Essex Superior Courts) An investigation was initiated premised upon allegations that asbestos was illegally removed from the Masonic Temple in Lowell dumped in a vacant lot in Andover. Ayala pleaded guilty in October 2001 and received two years in the House of Correction suspended, two years probation, and \$6,800 restitution to be paid within one year. A condition of his probation is that he cannot work in the asbestos abatement industry during probationary period.
- Commonwealth v. William Spear (Newburyport District Court) An investigation was initiated premised upon allegations of two abandoned tractor trailer trucks loaded with drums containing hazardous waste at a farm in Salisbury. The defendant pleaded guilty to one count of violating the Hazardous Waste Management Act in December 2001. He was sentenced to a suspended six-month jail term, with probation for two years. Defendant was also ordered to pay a \$5,000 fine and to perform 200 hours of community service.
- Commonwealth v. Kevin Holland (Worcester Superior Court) Holland pleaded guilty in July 2001 to illegal removal and disposal of asbestos, and was sentenced to a one-year suspended sentence, two years probation, and \$20,000 restitution and was made to comply with all asbestos regulations.
- Commonwealth v. Andrew Jones (Franklin Superior Court) Jones pleaded guilty to improper asbestos removal. Jones was sentenced to one year in the House of Correction suspended, two years probation, and a \$7,500 fine to Clean Air Act compliance fund.

## STATISTICAL SUMMARY

Opened Investigations	32
Charged in District Court	2
Indicted in Superior Court	4
Disposed in District Court*	3
Disposed in Superior Court*	9
Closed Cases*	35
Pending Cases	15
Restitutions and Fines	\$1,640,229

\* Some were opened in prior fiscal years.

During Fiscal Year 2002, the Environmental Crimes Strike Force opened 32 investigations and closed 35. There were one corporation and two individuals charged in District Court, and one corporation and three individuals indicted in Superior Court. Twelve cases resulted in guilty pleas. Of the 12 pleas, nine were handled in Superior Courts and three in District Courts. In addition, the Environmental Police executed two search warrants.

During Fiscal Year 2002, dispositions of cases prosecuted by the Environmental Crimes Strike Force resulted in fines amounting to \$1,112,500 and restitution in excess of \$527,729.

## SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

During Fiscal Year 2002, the Environmental Crimes Strike Force took a lead role in a cross-bureau, inter-agency Asbestos Initiative with the DEP, the Environmental Protection Division, and the Division of Occupational Safety to stem the tide of illegal removal and disposal of asbestos. The initiative resulted in convictions under the Clean Air Act in six counties for the illegal removal and/or disposal of asbestos.

## OUTREACH, EDUCATION, AND TRAINING

During Fiscal Year 2002, members of the ECSF were involved in community activities and both attended and taught training classes inside and outside the Office of the Attorney General, including:

- Conducted environmental crime trainings for the Criminal Justice Training Council and a number of municipal police training academies;
- Coordinated a cross-bureau, inter-agency Asbestos Initiative with the Environmental Protection Division, the Department of Environmental Protection, and the Division of Occupational Safety to stem the tide of illegal removal and disposal of asbestos-containing waste;
- Attended monthly meetings of the Central Artery/Tunnel Environmental Oversight Committee, which oversees environmental compliance of the CA/T project, as the Attorney General's representative;
- Attended monthly meetings of the Multi-Agency Task Force on Schools;
- Formulated the Healthy Schools Council, in conjunction with the Executive Office of Environmental Affairs, the Division of Occupational Safety, and the Department of Environmental Protection;
- Served as the Office of Attorney General's representative at a number of conferences and trainings sponsored by the Northeast Environmental Enforcement Project;
- Presented in-house trainings in the use of handwriting experts at trial and closing arguments;
- Served as a faculty member of NAAC Intensive White Collar Prosecutor Training; and
- Served as a faculty member of the Northeast Environmental Enforcement Project's Advanced Environmental Crimes Training Course in New Jersey

## FINANCIAL INVESTIGATION DIVISION

The Financial Investigation Division provides the Criminal Bureau with eight experienced civilian investigative professionals who investigate and assist in the prosecution of white-collar criminal cases. These investigations include larceny, public corruption, campaign finance violations, securities fraud, tax fraud, and all other white-collar frauds which are referred to the division. The investigators bring to the division many years of experience from investigating cases in local, state, and federal government as well as private-sector venues.

Investigators assigned to the Financial Investigation Division work as part of the bureau's team approach to criminal investigative work. Division members become involved in matters at the start of investigation and work closely throughout with Criminal Bureau prosecutors and also Massachusetts State Police assigned to the bureau's Criminal Investigation Division.

Investigators may also be asked to work on a case-by-case basis with investigative or audit personnel from referring agencies such as the Securities Division of the Secretary of State's Office (SOS), Board of Bar Overseers (BBO), Criminal Investigations Bureau of the Department of Revenue (CIB), and Office of the State Auditor (OSA).

As part of the investigation and prosecution team, division investigators assist in the design and implementation of an investigative plan for each investigation. The planning requires that each member of the division understand the nature of the allegation, elements of the crime, and evidence required to prove the matter at trial.

Criminal Bureau investigations involve prolific documentary evidence and require division investigators to perform extensive examination and analysis of business, personal, and financial records to document the illegal activities of the white-collar criminal. Additionally, division investigators conduct interviews of victims, witnesses, and targets, and provide summary witness testimony before special grand juries and in trial settings. Further, utilizing modern computerized technology, investigators are able to scan a wide array of informational databases as well as the Internet to track and profile potential subjects of criminal investigations.

The majority of the division's investigative assignments come from the bureau's Economic Crimes Division. The division works closely with the Economic Crimes Division Chief during the screening process and then with the assigned assistant attorney general when a matter has been accepted for formal investigation.

Other sources of investigative assignments for the division come from the High Tech and Computer Crimes Division and the Public Integrity Division.

During Fiscal Year 2002, the division also committed investigative resources to the Special Investigations & Narcotics Division, the Consumer Protection Unit investigating consumer crimes, and the bureau's investigative efforts of the Central Artery/Third Harbor Tunnel Project. With respect to the former, the division provided individual and corporate financial profile information for the State Police in one of their undercover operations. Division members assisted the Consumer Protection Unit's investigator with numerous witness interviews and provided analytical and organizational skills to the Bureau's Central

Artery/Third Harbor Tunnel Project investigation. Since the division's formation in 1995, it has also performed investigative assignments for the Bureau's Environmental Crimes Strike Force and the Appellate Division.

This fiscal year, division personnel included three Certified Fraud Examiners and five investigators with backgrounds from the banking industry, insurance industry, a private investigative firm, and the Middlesex County District Attorney's Office. Members of the division for all or part of the year were: Paul Stewart, Division Director, Certified Fraud Examiner (CFE); David Baker; Bill Frugoli, CFE; Jen Hollingsworth; Brendan Kelleher; Jim McFadden, CFE; Jon Murphy; and Sallyann Nelligan.

## SIGNIFICANT CASE SUMMARIES

Division members served as Commonwealth summary witnesses for two trials during Fiscal Year 2002. Additionally, division members were scheduled as trial summary witnesses for six of the seven Treasury cases which pleaded out in advance of trial. Financial Investigation Division members provided summary witness testimony in the Commonwealth v. Ziad Shahin case. This was an Economic Crimes Division case in which the defendant was found guilty by a jury trial. The Division also prepared the summary presentation for another Economic Crimes Division case, Commonwealth v. Leo Burns & Thomas Ribaga. The defendants pleaded guilty during the trial immediately preceding the summary presentation.

- Commonwealth v. Arrighi, et al. (Economic Crimes Division) During this fiscal year, significant amounts of the division's investigative resources were devoted to preparing for trial in these matters, which involved investigating the theft of approximately \$9.5 million from the Treasury of the Commonwealth.

This matter was scheduled for trial in the first quarter of Fiscal Year 2002. Given the complex nature of the case, there were numerous post-indictment and trial preparation interviews. Treasury trial preparation also involved the preparation of charts summarizing the financial analysis based in part on the financial transaction database created by the division. Six of the seven defendants pleaded guilty to their involvement in this theft during Fiscal Year 2002.

Following is a list of some of the other matters investigated by division members during the fiscal year which resulted in indictments. As with the previously referenced matter, the division requesting Financial Investigation Division involvement is listed parenthetically and more specific information

about each of these matters can be found by referring to that division's section in the bureau's report.

- Commonwealth v. Shirley Hoak (Economic Crimes Division)
- Commonwealth v. Jeanna Monterio (Public Integrity Division)
- Commonwealth v. Brian Delaney (Economic Crimes Division)
- Commonwealth v. Zachary Hildreth (Economic Crimes Division)
- Commonwealth v. John Wilbur (Economic Crimes Division)
- Commonwealth v. Michael Rooney (Public Integrity Division)

### STATISTICAL SUMMARY

REFERRING SOURCE	NUMBER OF CASES
Economic Crimes Division	41
Public Integrity Division	10
High Tech and Computer Crimes Division	5
Special Investigations and Narcotics Division	2
Consumer Protection Prosecution Unit	4
Criminal Bureau Chief	1
Public Protection Bureau, Investigation Division	1
Central Artery / Third Harbor Tunnel Project	1
<b>TOTAL</b>	<b>65</b>

## SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

The division performs many administrative duties for the Criminal Bureau with respect to cars, seized evidence and the spending of forfeited funds. The division is responsible for all bureau cars — the assignment, reporting, and maintenance. The division maintains a log of all money seized by the State Police in association with any arrest. The seized money is kept in safety deposit boxes and the contents are inventoried on a quarterly basis by division staff. Additionally, the division prepares an accounting record of all forfeited funds of the Special Investigations and Narcotics Division that is disbursed in accordance with the Commonwealth's forfeiture laws. The accounting system is designed as a management tool for the bureau, not only to retrospectively track spending but also to project future needs.

The division also works with State Police command to assist with background and warrant checks and NCIC inquiries. Division members also take part in the rotation as duty officers. The duty officers deal with all citizen inquiries for that particular day.

## OUTREACH, EDUCATION, AND TRAINING

The staff is also an integral part of the bureau's outreach to referral agencies. We maintain contact with the Chief Investigator at CIB, the BBO's Senior Financial Investigator, and the Executive Director of the Client Security Board to update them monthly on the status of all referrals from their respective agencies to the Bureau. CIB and BBO cases are referred through the Economic Crimes Division. Our outreach efforts are designed to complement those of the Chief of the Economic Crimes Division.

Staff also maintain memberships and take an active role in many external and internal organizations, including the International Association of Certified Fraud Examiners, High Tech Crime Investigators Association, International Association of Financial Crimes Investigators, Boston Clearinghouse Check Fraud Association, National White Collar Crime Commission, and National Association of Securities Dealers. We also serve as members of the Attorney General's Organized Theft Task Force, Office-Wide Health Care Committee, and Elder Task Force, and on a committee recommending criminal legislative changes to the Criminal Bureau Chief.

As part of the Attorney General Institute, division members have prepared and taught training sessions for their colleagues, as well as personnel from outside referral agencies and groups such as the Arson Investigators Association, the Massachusetts Society of Certified Public Accountants, the Southeastern Massachusetts Fraud Investigators Association, Suffolk University, the Boston Clearinghouse Check Fraud

Association, and the Boston Chapter of the International Association of Certified Fraud Examiners and numerous local school districts.

Presentations included:

- How to Perform Title Searches of Registered and Recorded Land, and Review Probate Court Records;
- Interview and Report Writing Techniques;
- Financial Investigative Techniques; and
- Investigative Resources for the Financial Investigator

The division's intern program seeks to provide a valuable one-semester training experience for interested students who have a background in accounting, finance, business law, or criminal justice. Through the efforts of our intern coordinator, the division has been provided with a steady stream of talented interns from Boston area schools.

## **CONSUMER PROTECTION PROSECUTION UNIT**

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In September 2001, the Criminal Bureau and Public Protection Bureau announced the establishment of a Consumer Protection Prosecution Unit (CPPU) to be housed within the Criminal Bureau. The CPPU was formed to address the burgeoning amount of fraud targeted at consumers. These crimes typically involve multiple victims who live and work in many jurisdictions, and as a result, fly under the radar screen of individual police departments, local prosecutors, and District Court judges, as they each have only a small part of the overall scheme in front of them. What is more, the seriousness of these cases cannot be judged by economic loss alone, as the psychological impact on the victims — who are often from among our most vulnerable populations, whether the elderly or immigrants — that comes from being conned by someone they trusted is often devastating and may have an economic ripple effect as the victim withdraws from participation in other legitimate transactions as the result of his or her loss of trust.

CPPU is staffed by David Cosgrove, a senior prosecutor, who reports directly to the Deputy Chief of the Criminal Bureau, and Jay Sufferdini, an experienced fraud investigator. While part of the Criminal Bureau, they coordinate their efforts with the Consumer Protection Division of the Public Protection Bureau and draw on the resources of the investigators assigned to that division as well as the other prosecutors and financial investigators and State Police assigned to the Criminal Bureau.

## SIGNIFICANT CASE SUMMARIES

- Commonwealth v. Gaetano Scarpaci (Plymouth and Lowell District Courts) Customers of Scarpaci's home improvement business complained that he had taken money for work that he did not perform. Understanding the difficulty in proving that Scarpaci never intended to do the work — which would need to be shown to establish a violation of the larceny statute — the CPPU charged Scarpaci with multiple violations of the specialized home improvement fraud statutes designed to address this specific type of criminal conduct. Those statutes mandate criminal penalties if a home improvement contractor operates without a license, takes more than a 33% deposit or does not place estimated start and end dates in the contract with the homeowner. Scarpaci pleaded guilty and was sentenced to three years of probation, ordered to pay a fine and perform community service, and prohibited from working in the home improvement business.
- Commonwealth v. Todd Pouliot (Plymouth District Court) and Commonwealth v. James Palone (Middlesex Superior Court) As with Commonwealth v. Gaetano Scarpaci (described above), these cases involved allegations that represent examples of the most serious abuses of home improvement contract businesses to commit fraud. Accordingly, the CPPU charged Pouliot and Palone with multiple violations of the specialized home improvement fraud statutes designed to address this specific type of criminal conduct. The cases remain open at fiscal year-end.
- Commonwealth v. Gaspar Francois (Suffolk Superior Court) Francois allegedly preyed on the immigrant community by approaching immigrants in various locations, including immediately outside the office of the Immigration and Naturalization Service, representing himself as a person with specialized training and skills who could help them with the INS, and then taking their money without providing any service in return. He did, however, allegedly provide his victims with INS documents that he had manufactured in order to give them the illusion of progress. Francois faces five felony counts of Larceny by False Pretenses and multiple counts of Forgery and Uttering. This case remains open at fiscal year-end.

## STATISTICAL SUMMARY

The following chart summarizes the case referrals that the CPPU screened for possible investigation and prosecution during Fiscal Year 2002.

<u>CASE DESCRIPTION</u>	<u>NUMBER OF REFERRALS</u>
Home Improvement Contractor Fraud	17
Unlicensed Practice of Law, Medicine, or Accounting	13
Consumer Cons: Pyramid Schemes, etc.	11
Impersonation of Charities	3
Retail Operation Committing Fraud	11
Other	9
<b>TOTAL</b>	<b>64</b>

During Fiscal Year 2002, the CPPU charged four individuals (one in two separate courts). Three of these defendants allegedly engaged in egregious examples of home improvement contractor fraud and were charged under the specialized statutes designed to deal with that problem, and the fourth defendant faces charges of larceny and forgery. One person pleaded guilty, and the other three cases remain open at fiscal year-end. The CPPU prosecutor also assisted with the trial of a securities fraud and larceny case with an Assistant Attorney General from the Economic Crimes Division and completed the prosecution of a corrupt Boston Police Officer as a Special Assistant District Attorney for Suffolk County.

## SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

The CPPU devoted substantial energy during this fiscal year to publicizing its existence with outreach to local police departments and district attorneys offices. Additionally, as part of the same effort, the CPPU prosecutor served on the Attorney General's Elder Fraud Strike Force. Finally, the CPPU prosecutor regularly convened the Consumer Protection Case Screening Committee, a cross-bureau endeavor that brings together prosecutors and investigators from the Criminal Bureau and Public Protection Bureau to identify trends, allocate investigative resources, and determine which process — civil or criminal — is best able to handle a given matter effectively and efficiently.

## OUTREACH, EDUCATION, AND TRAINING

The CPPU prosecutor's substantial trial and investigative experience placed him in constant demand as a trainer, and during the year he was called on to teach at a number of internal education events. Among the highlights in this area were a daylong investigative skills seminar coordinated by the CPPU and trial advocacy and deposition skills classes presented by the Attorney General's Institute. CPPU staff also attended the New England Economic Crimes Summit and the weeklong Trial Advocacy III class at the National Advocacy Center.

## CENTRAL ARTERY / TUNNEL PROJECT

The Central Artery/Tunnel Project (CA/T Project) is the largest, most complex, and most technologically advanced highway construction project in United States history. The CA/T Project is building or rebuilding approximately 161 lane miles of urban highway, with about half in tunnels, in a 7.5-mile span through the heart of downtown Boston. With an estimated completion date in the spring of 2005, the CA/T Project will have taken over 14 years and cost approximately \$14.6 billion.

The Office of the Attorney General has many legal responsibilities relating to the CA/T Project. Among them, the Criminal Bureau investigates and prosecutes individuals, contractors, and corporations for criminal law violations on the CA/T Project. The Criminal Bureau receives referrals and allegations from diverse sources and investigates these matters with the assistance of internal investigators, Massachusetts State Police, and, in certain circumstances, other state and law enforcement agencies. Allegations typically concern procurement fraud, larceny, false claims, criminal environmental violations, and tax evasion. The Criminal Bureau also monitors a Big Dig Fraud Hotline which receives calls regarding potential fraud, waste, and abuse on the CA/T Project.

Because of the increasing volume and complexity of the Attorney General's responsibilities concerning the CA/T Project, and the need for centralized control and organization of these responsibilities, in January 2001 the Attorney General created the position of Director of the CA/T Project. Since many CA/T Project referrals originate as criminal matters, the Director of the CA/T Project was placed in the Criminal Bureau. The Director's duties and responsibilities include supervising and conducting criminal and affirmative civil investigations and litigation pertaining to the CA/T Project, coordinating CA/T Project investigations and litigations across the various bureaus and divisions of the Office, and serving as the liaison between the Criminal Bureau and other state and federal law enforcement agencies with oversight responsibilities for the CA/T Project.

Specific cases involving allegations of criminal activity concerning the CA/T Project are referred to a Criminal Bureau division based on the subject matter of the case. For example, the Economic Crimes Division handled cases involving allegations of economic crimes concerning the CA/T Project in Fiscal Year 2002. Likewise, the Environmental Crimes Strike Force handled cases involving allegations of environmental crimes relating to the CA/T Project.

In addition to the CA/T Project Director, Nancy Bloomberg, the following individuals worked on Criminal Bureau cases relating to the CA/T Project in Fiscal Year 2002: Eugenia Carris; Brendan Kelleher; Paul J. Molloy; Jenny Prokopovich; Stephen Prunier; Mary Ruppert; and Frank Russo.

## SIGNIFICANT CASE SUMMARIES

The following cases involve allegations of criminal conduct concerning the CA/T Project but were handled by other divisions in the Criminal Bureau and are therefore discussed elsewhere in this report:

- Commonwealth v. MRP Site Development, Inc. (Environmental Crimes Strike Force)
- Commonwealth v. Lawrence Shetler (Public Integrity Division)
- Commonwealth v. Yovette Mumford (Public Integrity Division) In addition to the foregoing, in April 2001 the Criminal Bureau commenced an investigation relating to the CA/T Project's finances, stemming from a report issued by the Massachusetts Office of the Inspector General on March 20, 2001. This investigation remained open at the close of the fiscal year.

## SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

In addition to CA/T Project cases investigated and prosecuted by the Criminal Bureau, the Business and Labor Protection Bureau (BLPB) and the Government Bureau also handle important legal matters concerning the CA/T Project. For instance, the BLPB enforces laws relating to wage and overtime violations and investigates and prosecutes cases of workers' compensation and insurance fraud. The Government Bureau investigates and conducts affirmative civil litigation relating to false claims on the Central Artery/Tunnel Project and defends the Commonwealth of Massachusetts in actions brought by third parties regarding the CA/T Project.

One of the most important functions of the CA/T Project Director is to coordinate and consolidate CA/T Project activities and litigations across the various bureaus of the Attorney General's Office. This includes facilitating the flow of information across bureau lines and acting as an information hub on CA/T Project matters. To accomplish this goal, the CA/T Project Director created an internal task force group, made up of attorneys, investigators, and state troopers from each of the bureaus that handle CA/T Project matters, that meets on a regular basis to share information on existing cases and ideas on how the Attorney General's Office can effectively target fraud and abuse on the CA/T Project. As a result of these meetings, information concerning CA/T Project matters flows freely and timely across bureau lines, resulting in the sharing of relevant information and ideas, the avoidance of conflicts, and the designation of proper resources to each matter. The CA/T Project Director and the representatives from each bureau devoted significant time in the past fiscal year sharing information about and coordinating CA/T Project investigations and prosecutions.

The CA/T Project Director also spent significant time during the past fiscal year as a liaison to other state and federal law enforcement agencies with oversight responsibilities for the CA/T Project. More specifically, the CA/T Project Director served as the representative from the Attorney General's Office on the Oversight Coordination Commission, which is statutory empowered with certain oversight responsibilities for the CA/T Project. While the offices that make up the Commission differ in their statutorily power and expertise, the Commission provides a forum in which members can communicate ideas, share information, and coordinate CA/T Project oversight activities. The CA/T Project Director devoted significant time to the activities of the Oversight Coordination Commission in Fiscal Year 2002.

Finally, the CA/T Project Director spent significant time in the past fiscal year working cooperatively with the CA/T Project's legal counsel to design and implement measures to prevent and/or detect fraud and abuse on the CA/T Project.



# GOVERNMENT BUREAU

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ADMINISTRATIVE LAW DIVISION

Trial Division



## GOVERNMENT BUREAU

The Government Bureau provides representation for the Commonwealth and its agencies and officials in all types of civil litigation, and for employees of the Commonwealth with respect to certain civil claims made against them resulting from the performance of their duties. The bureau also provides general advice and consultation to officials with respect to legal issues arising in connection with their official functions, particularly in instances where such advance consultation may serve to prevent unnecessary litigation. As in previous years, in Fiscal Year 2002 the bureau continued its efforts to develop and maintain close working relationships with agency counsel and to provide them with information and advice on matters of broad common interest.

The Government Bureau consists of an Administrative Law Division and a Trial Division. During Fiscal Year 2002, several attorneys were assigned permanently to work in both the Administrative Law and Trial Divisions, and a sampling of cases from each division was assigned to attorneys in the other, so as to broaden the exposure of the attorneys to the full range of cases the divisions handle. In addition, a number of particularly complex and significant cases were handled by teams assigned to multiple divisions. Both divisions initiated affirmative litigation on behalf of state agencies and the Commonwealth and submitted briefs *amicus curiae* in cases presenting issues of law affecting the Commonwealth's interests.

The Administrative Law Division defends suits concerning the legality of governmental operations, particularly those seeking injunctive or declaratory relief. The division is also responsible for the legal review of all newly enacted town by-laws; the preparation of legal opinions for constitutional officers, heads of agencies, and certain other officials concerning issues arising from the performance of their official duties; and the review of proposed statewide initiative and referendum questions under amendment Article 48 of the Massachusetts Constitution to determine whether such questions are of the type that may lawfully appear on the ballot.

The Trial Division defends suits seeking damages or other relief for alleged wrongful acts of government officials or employees, particularly torts, real estate matters, contract-related disputes, employment disputes, civil rights violations, and environmental damage claims. The Trial Division also reviews certain contracts, leases, bonds, and various conveyancing documents submitted by state agencies for approval as to form.

During Fiscal Year 2002, the Government Bureau included Stephanie Lovell, Division Chief; Sherrie Costa; Peter Sacks; and Ernest Sarason. Staff members assigned to particular divisions within the Government Bureau are listed below.

In Fiscal Year 2002, in addition to the outreach activities undertaken by members of particular divisions as described below, Government Bureau attorneys offered a training for Department of Revenue attorneys and other staff regarding the public records law, the Fair Information Practices Act, the attorney-client privilege, and the work-product doctrine; spoke to a group of visiting Chinese legal scholars regarding the organization of the Attorney General's Office and the relationship of state agencies to the state and federal courts; served as faculty in a continuing legal education course concerning privilege issues; and held a meeting for all state agency counsel for the discussion of topics of mutual concern to the Attorney General and agency counsel.

## SIGNIFICANT CASE SUMMARIES

### AFFIRMATIVE LITIGATION

Both the Administrative Law Division and the Trial Division initiate affirmative litigation on behalf of the Commonwealth when such litigation is in the public interest; furthers the Attorney General's priorities; and has a significantly high monetary value or raises legal or policy issues of concern to the public and the Commonwealth. The Government Bureau maintained an active docket of affirmative litigation in Fiscal Year 2002 to protect the public interest and the interests of its state agency clients. Highlights of this affirmative litigation were as follows:

- Commonwealth v. Phillips (Suffolk Superior Court) The Attorney General had filed suit in Fiscal Year 2000 on behalf of the Teachers Retirement Board, seeking to recover over \$800,000 of unearned pension benefits from a retired teacher who had been mistakenly paid those benefits between 1990 and 1999. After the court appointed a receiver to prevent the concealment or transfer of the assets of the teacher and her husband, the court entered a consent judgment and execution against the defendants for nearly \$1 million. In Fiscal Year 2002 the court approved the receiver's report recommending transfer of the defendants' attached assets (approximately \$250,000 to \$300,000) to the Commonwealth.
- Secretary of the Commonwealth v. AFSCME Council 93 (Suffolk Superior Court) The Attorney General had earlier filed suit on behalf of the Secretary to vacate an arbitrator's decision to place a former employee of the Essex County Commissioner's Office in a position with the Essex Registry of Deeds. In Fiscal Year 2002 the Superior Court vacated the arbitrator's decision.

- Ruthardt v. United States (U.S. District Court) The Attorney General, on behalf of the Commissioner of Insurance acting as receiver of a liquidated insurance company, American Mutual, had earlier sought declarations that (1) claims by the United States against the estate were subject to the bar date for claims established by the Massachusetts Supreme Judicial Court and (2) the Commonwealth may distribute assets to the state insurance guaranty funds as assignees of policyholders before paying non-policyholder claims of the United States. In Fiscal Year 2002, the District Court ruled against the Commissioner on the first issue and for her on the second. The parties cross-appealed to the First Circuit Court of Appeals.
- Bowler v. Hawke, United States Comptroller of the Currency (First Circuit Court of Appeals) The Attorney General, on behalf of the Commissioner of Insurance, filed a petition challenging a ruling by the Comptroller of the Currency that federal law preempts state laws governing the sale of insurance by banks.
- Commonwealth v. National Association of Government Employees (Suffolk Superior Court) On behalf of the Office of Campaign and Political Finance (OCPF), the Attorney General had previously filed suit against a union's political action committee that had not performed its agreement to pay \$30,000 in settlement of claims of alleged campaign finance violations. The Commonwealth dismissed the lawsuit after the committee paid the \$30,000 and complied with the other terms of its agreement with OCPF.
- OCPF v. Healy (Suffolk Superior Court) On behalf of OCPF, the Attorney General sued an unsuccessful State Senate candidate and his treasurer for violations of the campaign finance laws. The case was settled following the candidate's payment of \$1,200 to the Commonwealth and execution of a disposition agreement.
- MDC v. Wood (Worcester Superior Court) The Attorney General filed suit on behalf of the Metropolitan District Commission (MDC) to prevent the defendant from interfering with work being performed on the MDC's sewer easement on the defendant's property in West Boylston. The case was settled by the MDC's agreement to do the work quickly and to forgo any monetary damages and the defendant's agreement not to interfere with the work.
- MDC v. T Equipment (Suffolk Superior Court) The Attorney General filed suit on behalf of MDC to recover use and occupancy fees based on the defendant's having continued to occupy property adjacent to the Neponset River in Milton after the MDC had acquired it for park purposes.

- Commonwealth v. Hodgdon d/b/a Blue Hills Adventures (Suffolk Superior Court) The Attorney General, on behalf of MDC, obtained a preliminary injunction preventing the defendant from advertising and conducting adventure outings on MDC property without having first obtained the necessary permits from the MDC.
- Commonwealth v. Bettuchi (Land Court) The Attorney General filed suit on behalf of MDC to obtain authorization to remove the defendant's shed from the MDC property on which it was encroaching. After a hearing, the parties settled the case by agreeing to a judgment that authorized the MDC to use reasonable efforts to move the shed off its property.
- Office of Child Care Services v. DeSisto School, Inc. (Suffolk Superior Court) The Attorney General, on behalf of the Office of Child Care Services (OCCS), filed suit for equitable relief against the DeSisto School, Inc. and the school's founder. OCCS alleged that the defendants were operating a residential school for children with special needs without meeting the needs of the children and without complying with the legal standards for operating a group care facility, including the possession of an OCCS license to operate a group care facility. OCCS also alleged that the school's practices and conditions seriously threatened the physical safety and welfare of the students. The court entered a number of preliminary injunctive orders against the school and later found the school in contempt of those orders. It also restricted enrollment of any new students at the school; required compliance with prior court orders as well as full implementation of OCCS-mandated policies; and required production of required building permits, inspection certificates, and reports by the end of Fiscal Year 2002.
- Commonwealth v. Goldish-Phipps (Springfield District Court) The Commonwealth obtained a judgment against a former employee of the Department of Social Services who had erroneously received nearly \$10,000 in direct deposits to her bank account but had failed to return the erroneous payments to the Commonwealth.
- Division of Administrative Law Appeals v. Chief Justice of the Superior Court (Supreme Judicial Court for Suffolk County) The court granted the Division of Administrative Law Appeals' petition for an order requiring that Superior Court Standing Order 1-96, governing judicial review of agency decisions in Superior Court, be modified to reflect that the agency whose proceedings are being reviewed need not file a transcript of the administrative proceedings with its answer, unless the plaintiff requests and pays for it in advance.

Government Bureau attorneys also litigated cases through the Attorney General's Abandoned Housing Project. The project is designed to assist community groups in choosing and appointing their own

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people to take over abandoned houses that, due to the absentee owners' indifference, have created a health, safety, and crime hazard for the community. The Attorney General assists the community groups by petitioning the appropriate court for an order permitting the community group to appoint their receiver and take charge of the blighted property for the benefit of the neighborhood. Once the receiver is appointed, the receiver and the community group work together on the actual repair and rehabilitation of the property.

## **ADMINISTRATIVE LAW DIVISION**

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The Administrative Law Division has three principal functions: (1) to defend lawsuits against state officials and agencies concerning the legality of governmental operations, particularly those seeking injunctive or declaratory relief; (2) to review all newly enacted town by-laws; and (3) to prepare legal opinions for constitutional officers, heads of agencies, and certain other officials concerning issues arising from the performance of their official duties. During Fiscal Year 2002, significant events occurred in each of these areas, as set forth below.

During Fiscal Year 2002, the Administrative Law Division included Judith Yogman, Division Chief; Luna Bacon; Lydia Badolato; Dena Barisano; Thomas Barnico; John Bowman; Erin Browne; Romeo Camba; Judith Cassino; Julie Collins; Tina Couch; Pierce Cray; Wanda Devereaux; Sandra Giordano; Daniel Hammond; John Hitt; Kelli Lawrence; Quinette Littleton; Bernadette Lovell; Maite Macdonald; Maria Makredes; Pauline O'Brien; Susan Paulson; Anthony Penski; Eva Poole; William Porter; Christopher Quaye; Robert Quinan; William Reynolds; Juliana Rice; Robert Ritchie; Deirdre Roney; Cynthia Rothaupt; Adam Simms; Ginny Sinkel; Amy Spector; Steven Thomas; Eva Wanat; Peter Wechsler; Richard Weitzel; Jane Willoughby; and Sheila York.

### **SIGNIFICANT CASE SUMMARIES**

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Highlights of some of the most significant cases handled by the Administrative Law Division in Fiscal Year 2002, grouped by subject matter, are as follows:

## ELECTIONS

- Bates v. Director of the Office of Campaign and Political Finance (Supreme Judicial Court) Supporters of the Clean Elections Law brought this action to require the Director of the Office of Campaign and Political Finance to provide campaign funds to candidates entitled to receive them, despite the absence of any appropriation of such funds by the Legislature, and to enjoin the Secretary from holding any elections until such funds had been made available to all eligible candidates. The Supreme Judicial Court held that, although the Clean Elections Law is expressly "subject to appropriation," the Legislature is nevertheless required by the amendment Article 48 to the Massachusetts Constitution either to repeal the law, which was enacted by initiative petition, or to fund it. The court further held that, by certifying a candidate as eligible to receive Clean Elections funding, the Director bound the Commonwealth to provide such funding. By way of relief, the court declined to order the Director to distribute funds, which he had no authority to do without an appropriation, and also declined to enjoin the Secretary from conducting elections. Instead, the court directed the single justice to enter a monetary judgment in favor of one certified candidate and any other candidates who subsequently qualified for such funding, rejecting the defendants' argument that such judgments were barred by sovereign immunity. Although the court presumed that the Legislature would appropriate money to pay such judgments, it authorized the single justice to retain jurisdiction to consider requests for further relief if the judgments were not satisfied. When the Legislature failed to appropriate money to pay the judgments, the single justice abrogated the Commonwealth's sovereign immunity and issued executions, which were ultimately used to seize and sell state property to satisfy the judgments for 11 candidates.
- McClure v. Secretary of the Commonwealth (Supreme Judicial Court) Chelmsford voters challenged the constitutionality of the 2001 redistricting plan for the State House of Representatives, which placed portions of Chelmsford in four representative districts. In upholding the plan as consistent with state constitutional requirements, the court held that this division of Chelmsford was justified because it achieved a closer degree of population equality among districts than would have been achieved under plaintiffs' alternative plan. The court also rejected plaintiffs' claim that the plan constituted a partisan political gerrymander in violation of the federal equal protection clause.
- Mayor of Cambridge v. Secretary of the Commonwealth (Supreme Judicial Court) In another challenge to the 2001 House redistricting plan, Cambridge officials and voters sought to invalidate the plan's placement of portions of Cambridge in six representative districts. In upholding

the plan, the court held that plaintiffs had failed to satisfy their burden of demonstrating that the Legislature's division of Cambridge was unreasonable. The court also opined that the Legislature properly considered the minority representation requirements of the federal Voting Rights Act in formulating its redistricting plan.

- Albano v. Attorney General (Supreme Judicial Court) Plaintiffs in this case challenged the Attorney General's certification of an initiative petition to amend the Massachusetts Constitution to limit marriage and marriage-related benefits to opposite-sex couples. In upholding the Attorney General's certification, the court held that the petition did not contain matters excluded from the initiative process by amendment Article 48 of the Massachusetts Constitution. In particular, the court held that the petition was not related to the powers of the courts merely because it would change the definition of a "valid" marriage and that it did not contain matters that are not related or mutually dependent merely because it would affect many statutory benefits or responsibilities.
- Tolman v. Finneran (U.S. District Court) The federal court dismissed another attempt to require the Legislature to fund the Clean Elections Law, finding the case barred by legislative and sovereign immunity.

## POWERS OF THE GOVERNOR

- Levy v. The Acting Governor (Supreme Judicial Court) This challenge to the Governor's removal of two members of the Massachusetts Turnpike Authority resulted in two decisions of the Supreme Judicial Court. In the first decision, the court held that the Governor has the power to remove members of the Turnpike Authority but declined to consider, as unripe, what procedural and legal standards apply to such removals. In the second decision, the court held that the Governor's removal authority was limited to removal for "cause," in the nature of malfeasance, misfeasance, or willful neglect of duty, and that the grounds for discharge here involved, instead, a difference of opinion over policy. The court therefore vacated the Governor's removal order.
- New England Division of the American Cancer Society v. Commissioner of Administration (Supreme Judicial Court) In this challenge to the Governor's authority under G.L. c. 29, § 9C, to reduce allotments for certain expenditures appropriated in the Fiscal Year 2002 budget, the court held that the Governor's authority applies whenever the total available revenues during a fiscal year are projected to be insufficient to cover the total appropriated expenditures for that year, even if the particular appropriation for which allotments are reduced is

from a fund in which there is no projected deficit. The court further held that the statute, as so construed, was not an unconstitutional delegation of the Legislature's authority to appropriate funds.

- Teamsters Local Union No. 404 v. Secretary of Administration & Finance (Supreme Judicial Court) In this labor relations case, the court held that the Governor may enlist aid from appropriate officials within the executive branch in deciding whether to recommend that the Legislature fund a collective bargaining agreement, and it is appropriate for those officials to communicate the Governor's likely position to the bargaining parties.

## CHILDREN AND FAMILIES

- Goodridge v. Department of Public Health (Suffolk Superior Court) The court held that same-sex couples have no statutory or state constitutional right to marry. At the close of the fiscal year, plaintiffs' appeal from that decision was pending.
- Adoption of Sherry (Supreme Judicial Court) A recently enacted statute gives foster parents the right "to be heard" at hearings on custody changes or termination of parental rights concerning a child in their care. In this case of first impression, the court held that foster parents' right to be heard is constrained by the usual evidentiary rules.
- Culliton v. Beth Israel Deaconess Medical Center (Supreme Judicial Court) The court held that the Probate Court has jurisdiction to consider a request for a pre-birth order requiring a hospital to list a child's genetic parents on the child's birth certificate, rather than the gestational carrier who gave birth to the child. The court further held that such an order should be granted where (1) the plaintiffs are the only genetic sources of the child; (2) the gestational carrier agrees with the relief sought; (3) no one else has contested the petition for such relief; and (4) the plaintiffs have waived any contradictory provisions in the surrogacy contract. The Attorney General filed an *amicus* brief in support of the position ultimately adopted by the court.
- Adoption of Olivia (Appeals Court) In this termination of parental rights appeal, the court held that a parent's right to counsel does not include the right to dictate who will be appointed and that the lower court did not abuse its discretion and appropriately focused on the best interest of the child in denying a motion to change counsel.

- Adoption of Natasha (Appeals Court) In another appeal from the termination of parental rights, the court held that, although DSS violated its own regulations by placing a child for adoption with a DSS employee, remand for disqualification of DSS was not required in light of the strong evidence of parental unfitness.

## EMPLOYMENT AND RETIREMENT

- Tri-County Youth Programs, Inc. v. Acting Deputy Director of the Division of Employment & Training (Appeals Court) In this appeal from the allowance of unemployment benefits, the court held that a claimant who alleges sexual harassment as the reason for leaving a job need not show that she took "reasonable steps" to keep her job. The court also rejected the employer's argument that the claimant assumed the risk of sexual harassment by taking a job working with emotionally disturbed youths. Accordingly, the court affirmed the agency's decision that the claimant left her job for "good cause" and was therefore entitled to receive unemployment benefits.
- Sullivan v. Town of Brookline (Supreme Judicial Court) In this case involving reinstatement of a formerly disabled police officer, the court held that (1) the Public Employee Retirement Administration Commission properly applied its former medical standards, pending the promulgation of new regulations; (2) retirees denied reinstatement have no administrative remedies; and (3) plaintiff had to be retrained before being reinstated. The Attorney General had filed an *amicus* brief in support of the position ultimately adopted by the court on the first two issues.

## EDUCATION AND HEALTH CARE

- Massachusetts Federation of Teachers v. Board of Education (Supreme Judicial Court) Under the Education Reform Act, the state Board of Education promulgated regulations requiring that mathematics teachers in certain public schools take — but not necessarily pass — a mathematics test as a pre-condition for renewal of their teaching licenses. In this case, the court upheld the validity of those regulations against a statutory and constitutional challenge brought by a teachers' union, finding the regulations to be a reasonable means of furthering the legitimate interest of providing a high-quality public education to all students in the Commonwealth.

- Rolland v. Cellucci (U.S. District Court) In this class action brought by mentally retarded nursing home residents, the court held that the defendant state agencies had a duty under federal law and under a previous settlement agreement in this case to provide “active treatment” to the plaintiffs and had failed to do so. As a remedy, the court ordered various forms of injunctive relief. At the end of Fiscal Year 2002, the state officials’ appeal from that decision was pending before the First Circuit Court of Appeals.
- Leopoldstadt, Inc. v. Commissioner of the Division of Health Care Finance & Policy (Supreme Judicial Court) In this challenge to Medicaid rates for providers of temporary nurses to nursing homes and hospitals, the Supreme Judicial Court held that the state rate-setting agency erred in setting industrywide rates, rather than considering the reasonable expenses of each temporary nursing agency, and in failing to afford temporary nursing providers a reasonable return on equity.

## LAND USE

- Zoning Board of Appeals of Wellesley v. Ardmore Apartments Ltd. Partnership (Supreme Judicial Court) The court held that a developer who received a comprehensive permit to build low- and moderate-income housing under the Anti-Snob Zoning Act had a continuing obligation to make some of the apartments available at below-market rates for as long as the housing is not in compliance with local zoning requirements, regardless of the terms of any construction subsidy agreements.
- Twomey v. Commissioner of Food & Agriculture (Supreme Judicial Court) In this case involving the enforcement of an Agricultural Preservation Restriction (APR) on the plaintiff’s property, the court held that the agency erred in presuming that building a house on APR property would increase the value of the property and make it unaffordable, thereby defeating the purpose of the Agricultural Preservation Act. The court further held that, in considering a request for permission to build a house on APR property, the agency could deny a request if the house would make the property unaffordable or could negotiate for an option to purchase the property at a price that disregards the value of the house.

## TAXATION

- Bayer Corporation v. Commissioner of Revenue (Supreme Judicial Court) In this appeal from a decision of the Appellate Tax Board, the court held that, where the Board's decision turned on the credibility of witnesses, the Board erred by issuing the decision without participation by the Board member who heard the evidence. This case has implications for all state adjudicatory proceedings.
- Ace Property & Casualty Insurance Co. v. Commissioner of Revenue (Supreme Judicial Court) In this tax case, the court struck down a state tax on premiums for crop insurance policies as preempted by the Federal Crop Insurance Act.
- Boston Towing & Transportation Co. v. Commissioner of Revenue (Supreme Judicial Court) In this appeal from the imposition of excise taxes for use of tugboats in the Commonwealth, the court held that tugboats are "boats" within the meaning of the sales and use tax statutes and that the use tax on tugboats does not violate the commerce or equal protection clause of the United States Constitution. By upholding the Commonwealth's power to impose excise taxes on tugboats, this case saved the Commonwealth a significant amount of tax revenue.

## UTILITIES

- Town of Andover v. Energy Facility Siting Board (Supreme Judicial Court) The court upheld the Board's approval of a petition to construct and operate an electrical generating facility in the Town of Andover. In so ruling, the court found the Board's decision to be supported by substantial evidence and sufficient findings concerning air emissions, minimization of environmental impacts, noise, traffic safety, and site selection process. The court rejected the Town's argument that the Board improperly delegated its decision-making authority to the Department of Environmental Protection.
- Tofias v. Energy Facility Siting Board (Supreme Judicial Court) In another energy facility siting case, the court held that a trust that owned vacant industrial property near the proposed power lines was not sufficiently affected by the environmental impact of the proposed power lines to have standing to challenge the Board's siting decision.

- Global Naps, Inc. v. New England Telephone & Telegraph (U.S. District Court) The court affirmed the Department of Telecommunications & Energy's interpretation of an interconnection agreement between two telecommunications carriers.
- MCI Telecommunications Corp. v. Department of Telecommunications & Energy (Supreme Judicial Court) Rejecting a challenge from a competing telephone company, the court affirmed the Department's decision permitting another telephone company to reduce certain rates by eliminating its pay phone subsidy.

## PUBLIC RECORDS

- Viriyahiranpaiboon v. Department of State Police (Appeals Court) In this Public Records Law case, the court held that blood tests in general, and particularly those that reveal genetic markers, are absolutely exempt from disclosure under the law's exemption for medical information.
- Antell v. Attorney General (Appeals Court) In another Public Records Law case, the court held that documents from a closed investigation of official misconduct were not exempt from disclosure under the privacy exemption, but the court remanded for a determination of what redactions should be made under the investigatory materials exemption and the CORI Law before the documents were released.

## PRISONERS

- Massachusetts Prisoners Association Political Action Committee v. Acting Governor (Supreme Judicial Court) In this challenge to a prohibition against political fundraising in state prisons, the court held that prisons are "buildings occupied for state . . . purposes" within the meaning of a statute prohibiting political fundraising in such buildings and that this prohibition is reasonably related to legitimate penological interests and is therefore constitutional.
- Longval v. Superior Court Department of the Trial Court (Supreme Judicial Court) The court upheld the constitutionality of statutes requiring inmates to pay court filing fees in civil cases.

## STATISTICAL SUMMARY

During Fiscal Year 2002, the Administrative Law Division opened 876 cases and closed 933 cases. At the close of the fiscal year, 2,044 cases were pending in the division. Cases handled by division attorneys resulted in 28 reported decisions of the Supreme Judicial Court, 19 reported decisions of the Massachusetts Appeals Court, five reported decisions of the United States Court of Appeals for the First Circuit, one reported decision of the First Circuit Bankruptcy Appeals Panel, seven reported decisions of the United States District Court for the District of Massachusetts, and one reported decision of the Bankruptcy Court for the District of Massachusetts. In addition, division attorneys were involved in numerous cases in those courts and in state trial courts that resulted in unpublished decisions.

## OUTREACH, EDUCATION, AND TRAINING

During Fiscal Year 2002, in addition to the substantial outreach efforts of the Municipal Law Unit detailed below, other Assistant Attorneys General in the Administrative Law Division: conducted a training for hearing officers within the Executive Office of Public Safety and the Sex Offender Registry Board on conducting adjudicatory hearings and writing decisions; taught a class at Boston College Law School on *Crosby v. National Foreign Trade Council* and the effect of foreign trade agreements on state laws; judged a moot-court competition at Boston College Law School; participated on two panels at Boston University Law School on public sector employment; and spoke at the annual Middlesex Retirement Board seminar on retirement law and the workings of the Contributory Retirement Appeals Board.

## MUNICIPAL LAW UNIT

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The Administrative Law Division's Municipal Law Unit discharges the Attorney General's responsibility of reviewing and approving municipal by-laws and by-law amendments from more than 300 towns throughout the Commonwealth. By statute, the Attorney General is charged with the review of town general by-laws (G.L. c. 40, § 32), town zoning by-laws (G.L. c. 40A, § 5), town historical district by-laws (G.L. c. 40C), and city and town Home Rule Charter amendments (G.L. c. 43B).

With respect to town by-laws, the Office exercises a limited power to disapprove local legislative action if the proposed amendment is found to be inconsistent with the laws or the Constitution of the Commonwealth. The Office has 90 days from the date on which it receives by-law amendments from the Town Clerk in which to conduct its review. The Office will disapprove any amendment, or appropriate portion thereof, where the amendment is in facial conflict with substantive state law or where mandatory procedural requirements of adoption are not met.

With respect to Home Rule Charter amendments, G.L. c. 43B prescribes that municipal charters and charter amendments from any of the 351 cities and towns in the Commonwealth must be reviewed by the Office, which must render its opinion on consistency with state law within 28 days after receipt of a proposed charter amendment. The Office is not required to review municipal charters or charter amendments enacted by the Legislature in special acts.

During Fiscal Year 2002, the most prevalent subjects of local regulation were by-laws regulating telecommunications facilities, wetlands, open space, agricultural uses and structures, and sexually oriented businesses. The Municipal Law Unit reviewed a total of 648 general by-laws, of which 560 (86.4%) were approved, 51 (7.9%) were approved with partial deletion, 10 (1.5%) were disapproved, and 27 (4.2%) were returned with a finding that no action by the Office was required by state law. The Unit reviewed 848 zoning by-laws, of which 783 (92.3%) were approved, 45 (5.3%) were approved with partial deletion, 18 (2.1%) were disapproved, and 2 (0.2%) were returned with a finding that no action by the Office was required by state law. The Unit reviewed 136 zoning map amendments, of which all (100%) were approved. The Unit reviewed five historic district by-laws, of which all (100%) were approved. Finally, the Unit reviewed 14 charter amendments, of which all (100%) were found to be consistent with state law. During Fiscal Year 2002, the authority conferred by St. 200, c. 299, to waive minor procedural deficiencies in submissions of by-laws for review, was exercised in over 41 instances, an increase of 100% from the previous year. In all instances, no objection was filed to the Office's waiver of the procedural deficiencies, thus allowing the Office to approve amendments that would otherwise have been disapproved.

Going above and beyond what is required by statute, the Office has chosen to extend the services and resources of the Municipal Law Unit by providing, time permitting, voluntary informal review of proposed town by-law amendments and — even though not subject to review by the Office — proposed city ordinances. During Fiscal Year 2002 the unit experienced a marked increase in the number of calls from local public officials and members of the general public, many of which related to anticipated changes in local laws and charters.

During Fiscal Year 2002, the unit experienced an increase in the number of cases in litigation in which municipal law issues are involved. Even where the Office has initially elected not to intervene or otherwise participate in such cases, the unit monitors developments so that the Office may become involved if warranted by developments in the case. At the close of Fiscal Year 2002, unit attorneys were monitoring 58 such matters, an increase of 16% from the previous year.

Over time unit personnel have gradually increased the unit's outreach efforts by writing and speaking to groups all around the Commonwealth. Particular emphasis has been placed on working with town clerks and local planning boards, as both are intimately involved in the substance and procedure of local legislation. The forms required for the submission of by-laws were completely revised and were presented and explained at the town clerks' conventions and meetings. Unit personnel attended the Massachusetts Town Clerks' Conventions to hold classes and to present and explain the changes in the forms used for submitting the by-law packets. The unit also participated in the 2nd Annual Municipal Law Update Conference. Unit personnel spoke at over 20 trainings or meetings of organizations concerned with municipal affairs and published several articles concerning municipal law issues.

## OPINIONS

The Attorney General's Office is authorized by G.L. c. 12, §§ 3, 6, and 9, to render formal opinions and legal advice to constitutional officers, agencies and departments, district attorneys, and branches and committees of the Legislature. Formal, published opinions are given primarily to the heads of state agencies and departments. In limited circumstances, less formal legal advice and consultation are also available from the Opinions Coordinator, as is information about the informal consultation process. The questions considered in legal opinions must have an immediate concrete relation to the official duties of the state agency or officer requesting the opinion. Hypothetical or abstract questions, or questions that ask generally about the meaning of a particular statute, lacking a factual underpinning, are not answered.

Formal opinions are not offered on questions raising legal issues that are the subject of litigation or that concern ongoing collective bargaining. Questions relating to the wisdom of legislation or administrative or executive policies are not addressed. Generally, formal opinions will not be issued regarding the interpretation of federal statutes or the constitutionality of enacted legislation. Formal opinion requests from state agencies that report to a cabinet or executive office must first be sent to the appropriate secretary for his or her consideration. If the secretary believes the question raised is one that requires resolution by the Attorney General, the secretary then makes or approves the opinion request.

During Fiscal Year 2002, the Attorney General's Office issued one formal opinion, a copy of which appears at the end of this report, addressing the application of the public records law to voter information contained in the Central Voter Registry established under G.L. c. 51, § 47C.

During the same time period, the Attorney General's Office issued 27 letters providing informal advice, providing a certification or designation to a federal agency in connection with the Commonwealth's participation in a federal program, or declining to give advice.

## **TRIAL DIVISION**

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The Trial Division is responsible for defending the Commonwealth in civil cases brought against the Commonwealth and its departments, agencies, and employees in a variety of actions primarily consisting of tort, eminent domain, employment, contract, civil rights, and land registration actions. Members of the division analyze each case at the outset to see if the case should be resolved through settlement or in favor of the Commonwealth by dispositive motion. If not, the case proceeds through the discovery phase, and the division continues to try to resolve the case through settlement or by filing a summary judgment motion. Alternative dispute resolution approaches are always considered and are utilized at any appropriate stage of the case. If the case goes to trial, the Trial Division aggressively defends the Commonwealth and its employees. The Trial Division has enjoyed impressive results by defending the Commonwealth and its employees in its trials, resulting in substantial savings to the Commonwealth and the public.

During Fiscal Year 2002, the Trial Division included David Kerrigan, Division Chief; Dorothy Anderson; Steven Baddour; Jason Barshak; Matthew Berge; Crispin Birnbaum; John Bowen; Ranjana (Chand) Burke; Joseph Callanan; Patrick Cassidy; Stephen Clark; Rosemary Connolly; William Daggett; Stephen Dick; Kristen Donald; Anne Edwards; Janet Elwell; Lisa Fauth; Dorothy Foley; Susan Gaeta; Norine Gannon; Cynthia Miles Gray; Mary Hall; Michelle Kaczynski; Ronald Kehoe; Angela Lee; Jennifer Lespinasse; Lucinda Macdonald; Howard Meshnick; Alicia Oladayiye; Holly Parks; Maite Parsi; Frances Riggio; Beverly Roby; Eric Seyfert; A. Thomas Smith; Mark Sutliff; James Sweeney; Marini Torres-Benson; Antonette Traniello; Teresa Walsh; Doris White; Jonathan White; Jessica Cocolli Wielgus; Nathanael Wright; and Charles Wyzanski.

## SIGNIFICANT CASE SUMMARIES

### TORTS

Most of the trials conducted by members of the Trial Division involve claims that the Commonwealth breached a duty of care owed to a member of the public, resulting in injury or property damage. The following cases are typical of the tort cases tried by members of the division during the course of the year.

- Hogan v. Department of State Police (Suffolk Superior Court) Plaintiff brought this case after she had run into the rear end of a state police cruiser after the state trooper had stopped to assist a motorist. The plaintiff had been drinking before the accident and later admitted to operating under the influence in a criminal case brought against her. After a five-day jury trial, the jury returned with a verdict for the state police, finding that the trooper had not acted negligently by assisting the motorist.
- Frizzi v. Metropolitan District Commission (Suffolk Superior Court) Plaintiff brought this action alleging that the condition of the ice at the MDC-operated ice rink in Revere caused her to fall and break her arm. Although the MDC disputed that the plaintiff had offered any evidence that the condition of the ice resulted in the fall, the jury returned a verdict for the plaintiff after a three-day trial and awarded her \$33,500.
- Hadley v. University of Massachusetts (Suffolk Superior Court) Plaintiff sought to recover for injuries sustained after slipping in a parking garage, claiming that the University of Massachusetts had negligently maintained the garage. After a trial, the jury returned a verdict for the defense.
- Krain v. Commonwealth (Suffolk Superior Court) Plaintiff claimed that the Highway Department had failed to adequately warn motorists on Route 2 that a drainage culvert was located off of the side of the road. Plaintiff was injured when she fell into the culvert after she jumped over a guardrail trying to find a bathroom somewhere in the woods. After trial, the jury found MHD 50% negligent and awarded the plaintiff \$7,000.

Many of the tort cases were also resolved through other means, including settlement and dispositive motions. The following cases are examples of resolutions achieved through those means:

- Perelra v. Town of Rehoboth and Commonwealth of Massachusetts (Bristol Superior Court and Appeals Court) Plaintiffs sought to recover for damages to their home due to what they claimed was the defective service of an oil burner located in the home. Plaintiffs had already brought and lost a case against the company that actually serviced the burner. Here they sought to recover for the negligence of the Town and Commonwealth in that the burner disappeared after local and state officials removed it from the home as part of an investigation into the cause of the fire, despite the fact that the plaintiffs failed to give notice to the town or to the state of their intention to bring an action against the company for over two years after the officials took custody of the burner. The Superior Court entered summary judgment for the defendants. On appeal, the Appeals Court affirmed, finding that the plaintiffs could not show either that the defendants had been negligent in the way they handled the burner or that loss of the burner had caused plaintiffs to lose their case against the company that serviced the burner.
- Kallio v. Fitchburg State College (Worcester Superior Court) Plaintiff brought this personal injury action after he slipped and fell on ice in a parking lot at Fitchburg State College. The college obtained summary judgment, successfully arguing that the plaintiff had failed to show that there was an unnatural accumulation of ice and snow in the lot.
- Sidney v. Massasoit Community College (Plymouth Superior Court) Plaintiff sought recovery for injuries claimed to have been suffered due to an assault and battery allegedly committed by college employees. The court allowed the college's motion to dismiss, agreeing that the Tort Claims Act bars an action for an intentional tort against the Commonwealth or its agencies and that plaintiff had failed to make proper presentment of the claim against the Commonwealth because the presentment letter did not specify the theory under which the plaintiff sought to recover in the complaint.
- Parker v. Balma (Boston Municipal Court) A former state police trooper asserted libel and slander as well as intentional infliction of emotional distress claims against the defendant, an internal affairs investigator, for statements made in an Internal Affairs Division report. Plaintiff had been the subject of much-publicized sexual misconduct allegations concerning incidents on and off duty. The state police investigated several incidents, the latest of which convinced plaintiff to take his retirement and a discharge rather than face a trial board. As the case neared trial, the plaintiff decided to dismiss the case with prejudice without any money being paid to him.
- Kennerly v. Commonwealth (Suffolk Superior Court) Plaintiff claimed that she sustained injuries from a fall on the Department of Mental Health-owned building steps due to an alleged unnatural accumulation of ice and snow. After a case evaluation, the case settled for \$19,000.

- Linnehan v. Gerry-Sylvia, et al. (Suffolk Superior Court) Plaintiff sought a declaration that the Committee for Public Counsel Services wrongfully paid a private attorney who was court-appointed to represent his minor child in probate and juvenile court. After a hearing, the court allowed CPCS's motion to dismiss for failure to state a claim and for lack of standing and denied plaintiff's cross-claim for judgment on the pleadings.
- Corbin v. Commonwealth (Suffolk Superior Court) Plaintiff claimed that she slipped on ice-coated, snow-covered, ridged, and rutted stairs at the Roxbury District Courthouse, fracturing her left ankle. The Trial Court claimed that proper snow clearing procedures were followed. The case settled for \$19,500 on the first day of trial after the parties conducted a conference with the court.
- Cahalane v. Department of Social Services, et al. (Middlesex Superior Court) The plaintiff, the biological mother of a 2-year-old boy who drowned in a pool at his foster parents' house, brought this action against the foster parents and DSS for negligence. Due to the potential exposure to the Commonwealth and to the foster parents, the case settled for \$53,000.

## CONTRACTS

The division defends the Commonwealth and its agencies in a variety of contract actions consisting of construction disputes, breach of lease cases, and bid protests. Often these cases are complex because they involve interpretation of bidding regulations and a complicated statutory framework. These cases also frequently require the division to defend requests for preliminary injunctive relief which may be dispositive of the entire case. Unlike tort cases, there is no statutory cap on the potential exposure to the Commonwealth, so the Commonwealth's liability exposure can be quite large. The following are examples of the types of contract cases handled by the division and the means of resolution.

- Siemens Building Technologies, Inc. v. Division of Capital Asset Management (DCAM) (Suffolk Superior Court) This contract dispute involved the application of the public bidding laws to a project to construct a new student center at the University of Massachusetts. Siemens claimed that it had been the lowest bidder for the HVAC system and that it had been harmed when the bid went to a competitor after DCAM decided to use a different system for the building. Siemens filed this case seeking to enjoin University of Massachusetts from proceeding with the project without using its product. After a hearing, the Superior Court agreed with DCAM's argument and denied the preliminary injunction.

- Mastoran Rest. Inc. v. DCAM (Suffolk Superior Court) This case was brought by a company affiliated with Burger King, claiming that the bidding process for two public rest area sites on Route 128 unduly favored the winning bidder, McDonald's. The plaintiff sought initially to enjoin the award of the contract to McDonald's, but the court denied that request. After extensive discovery, DCAM obtained summary judgment for all defendants.
- TLT Construction Co. v. DCAM (Suffolk Superior Court and Appeals Court) This case arose out of a claim for extra costs associated with the disposal of debris from the demolition of buildings at Worcester State Hospital and the elimination of certain asbestos abatement work in the buildings. DCAM's exposure, with interest, was approximately \$3.8 million. A court-appointed master ruled for the contractor on both issues, and that decision was adopted by the trial court. DCAM appealed and then settled the matter while on appeal by agreeing to pay the contractor \$2.8 million, essentially equal to the cost of disposal of the debris.
- Dupont Engineering, Inc. v. Commonwealth (Suffolk Superior Court) Plaintiff brought this action after the Massachusetts Highway Department (MHD) failed to pre-authorize plaintiff to bid on certain highway projects. MHD took this action after the plaintiff failed to make payments for details. Plaintiff sought an injunction to reinstate its qualified status, but the court denied the request.

## REAL ESTATE

The real estate cases consist primarily of eminent domain disputes. Like contract cases, there is no statutory cap that limits the Commonwealth's exposure to damages in these types of cases, so the potential liability in any case can amount to millions of dollars. Effectively defending these cases results in substantial savings for the Commonwealth and its taxpayers. The efforts of the Trial Division over the last fiscal year have resulted in savings of at least \$3 million. The following are examples of the types of cases handled in this area and the manner in which they were resolved.

- Cole v. Commonwealth (Plymouth Superior Court) This case involved taking over 30 acres of land owned by the plaintiffs and their ancestors for hundreds of years. The taking was made to allow construction of Route 44 between Route 3 and Route 58 in Carver. Plaintiff's appraiser testified that the taking resulted in damages of \$3.4 million; the Commonwealth's appraiser testified that damages were \$780,000. The jury came back with a verdict of \$1.4 million, thus saving the Commonwealth over \$2 million.

- Congregation of the Sisters of the Divine Providence v. Massachusetts Highway Department (Plymouth Superior Court) MHD took 36 acres located on Route 80 in Kingston for the new Route 44 project. The Congregation owns and operates Sacred Heart High School on part of the property and a summer camp on another part of the property. Plaintiffs claimed damages in the amount of \$1.8 million; their appraiser testified that damages were \$1.2 million; and the Commonwealth's appraiser testified that damages were \$440,000. The jury returned a verdict of \$1,040,510.
- O'Donnell v. Commonwealth (Essex Superior Court) The MDC took parcels totaling 4.5 acres on Rumney Marsh in Saugus for park purposes. The plaintiff sought damages in the amount of \$616,000, claiming that the land could have been developed as office space, while MDC's experts testified that the highest and best use of one parcel was as a single-family home and of the other was for conservation purposes. After trial, the jury returned a verdict of \$150,000, saving the Commonwealth hundreds of thousands of dollars.
- Corliss v. City of Fall River and Commonwealth (Land Court) Plaintiff sought to acquire title to land in Fall River alleged to belong to the Seaconke Wampanoag Indian Tribe. The Commonwealth intervened and joined in motions by the co-defendants asserting that the plaintiff did not represent the tribe and lacked standing to prosecute this action. After a trial on this issue, the court found that the plaintiff indeed lacked standing and dismissed the case.
- Barrus v. MDC (Worcester Superior Court) The MDC took one-third of an acre of land in Holden. Plaintiff testified that the land had a value of \$52,000 but then changed that figure to \$44,500; MDC's appraiser testified to a value of \$12,500. After a two-day trial, the jury returned a verdict for the plaintiff in the amount of \$28,000.
- Wellford Corp. v. MHD (Middlesex Superior Court) MHD took three easements on property in Lexington for purposes of wetlands restoration associated with a project along Route 2A. Waste was found on the property, and MHD incurred clean-up costs for which it will seek recovery. After mediation, the case settled for a payment of an additional \$50,000 to the plaintiff, and the Commonwealth obtained a two-year extension on the easements, worth more than the cost of settlement.
- Mobil v. Commonwealth (Middlesex Superior Court) This action arose from a taking in Sudbury to widen Route 20 at an intersection. Plaintiff claimed damages of \$375,000 to \$430,000. The Commonwealth's expert determined that damages were between \$128,000 and

\$172,000, depending on the likelihood of a variance from the Town of Sudbury. The case settled for \$150,000 in additional money being paid to the plaintiff.

## EMPLOYMENT, CIVIL RIGHTS, AND OTHER CASES

The division handled numerous employment, civil rights, and miscellaneous cases during the course of the year. These cases present difficult issues because there is no limit on the monetary exposure and because such claims frequently are brought against individuals in addition to state agencies. Typical of such cases handled during Fiscal Year 2002 were the following:

- **Johnson v. Comptois** (U.S. District Court) The plaintiff alleged that the manner in which she was physically restrained by mental health workers resulted in a broken arm and a violation of her civil rights. The defendants included three mental health workers who were involved in the restraint. After trial, the jury found two of the three defendants had not violated her civil rights. The jury found that one defendant was liable but awarded only \$5,000 in damages — significantly less than what had been offered before trial. The trial judge took the unusual step of asking the Assistant Attorney General handling the case to thank the mental health workers for the hard work they perform on a daily basis.
- **Bryden v. Commonwealth** (Suffolk Superior Court) Plaintiffs brought this civil rights action against the Executive Office of Health and Human Services for the manner in which the Department of Social Services (DSS) investigated allegations of sexual abuse and neglect at the plaintiffs' home. The investigation resulted in DSS removing two children from the home. The defendant sought summary judgment on the grounds that the Commonwealth itself cannot be sued for civil rights violations and that, at best, the plaintiffs alleged negligence, not any violation of civil rights. The court agreed and entered judgment dismissing the case.
- **Young v. Morrissey** (Essex Superior Court) A mental health worker sued the Department of Mental Retardation and his supervisor for transferring him out of patient care at a DMR facility. The plaintiff alleged that the transfer constituted sex discrimination and retaliation for filing an earlier MCAD complaint. DMR defended the case on the basis that there had been an injury to a patient at the facility, and the transfer was due to a legitimate concern for patient care. After a six-day trial, the jury returned with a verdict for the defendants.

- Donahue v. Commonwealth (Suffolk Superior Court) The plaintiff, after being terminated from employment at the Department of Mental Retardation, brought a variety of claims against DMR and many of its employees. Plaintiff alleged civil rights violations, violations of the whistleblower statute, and various common law tort claims. After two weeks of trial, the jury returned a verdict for all defendants on all counts.
- Phillips-Farr v. Commonwealth (Suffolk Superior Court) Plaintiff, who had been employed by DSS as an area director, brought this race and handicap discrimination action against DSS. After discovery, the parties engaged in intensive mediation, and a settlement of \$250,000 was reached shortly before trial.
- Cameron v. State Police (Middlesex Superior Court) The plaintiff brought this sexual harassment claim against the state police and two individuals. The defendants moved for judgment on the pleadings, arguing that the allegations in the complaint did not show sexual harassment but, at most, that two individuals had engaged in a personal relationship in the office in which the plaintiff worked. The court agreed and allowed the motion. The plaintiff subsequently filed an appeal, which remained pending at the close of the fiscal year.

## STATISTICAL SUMMARY

The Trial Division opened 242 new tort cases in Fiscal Year 2002 and closed 154; at the close of the fiscal year, 908 such cases were pending. The division opened 33 new contract cases and closed 28 during Fiscal Year 2002; at the close of the fiscal year, 145 such cases were pending. The division opened 103 new real estate cases and closed 101 during Fiscal Year 2002; at the close of the fiscal year, 452 such cases were pending. The division opened 202 new employment, civil rights, and other miscellaneous cases in Fiscal Year 2002 and closed 83; at the close of the fiscal year, 384 such cases were pending.

## OUTREACH, EDUCATION, AND TRAINING

During Fiscal Year 2002, Assistant Attorneys General in the Trial Division participated in a wide range of outreach and training efforts, including presenting trainings on how to terminate public contracts, pre-trial motions, federal civil rights litigation, and public-sector legal careers.



# PUBLIC PROTECTION BUREAU

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CIVIL RIGHTS AND CIVIL LIBERTIES DIVISION  
CONSUMER PROTECTION AND ANTITRUST DIVISION  
ENVIRONMENTAL PROTECTION DIVISION  
INSURANCE DIVISION  
INVESTIGATIONS DIVISION  
DIVISION OF PUBLIC CHARITIES  
UTILITIES DIVISION  
MEDIATION SERVICES DIVISION



## PUBLIC PROTECTION BUREAU

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The Public Protection Bureau manages and oversees civil and criminal affirmative litigation on behalf of the Commonwealth and its citizens; the development of policy, legislative, and regulatory proposals; and personnel for seven divisions: Civil Rights and Civil Liberties Division, Consumer Protection and Antitrust Division, Environmental Protection Division, Insurance Division, Investigation Division, Division of Public Charities, Utilities Division, and Mediation Services Division. The bureau also includes the Consumer Complaint and Information Section and oversees the Local Consumer Aid Fund, which provides grants to local community groups to mediate and resolve consumer complaints at the local level.

The bureau develops and coordinates healthcare policy initiatives to improve the coordination, enhancement, and expansion of current healthcare policy enforcement efforts. The bureau targets its efforts to preserve access to affordable, high-quality healthcare responsive to the needs of communities.

The bureau's Mediation Services Division coordinates and staffs Attorney General Tom Reilly's Student Conflict Resolution Experts (SCORE) Program, a nationally recognized peer mediation program created to reduce violence in schools and foster safer learning environments for students. In addition, Mediation Services oversees a Conflict Intervention Team (CIT) of specially trained community mediators, who mobilize on a moment's notice to provide emergency mediation service to schools in crisis or on the verge of crisis.

The bureau oversees Attorney General Reilly's Community Benefits Guidelines for both hospitals and HMOs. Members of the Insurance Division, the Consumer Protection and Antitrust Division, and the Public Charities Division staff the Community Benefits initiative.

The bureau also has an internal task force of Elder Law Advocates made up of assistant attorneys general and office investigators in areas of elder law, including long-term care issues, protective services, financial exploitation of elders, and home healthcare services. These advocates work in conjunction with the Elder Hotline to address specific elder protection concerns.

The Public Protection Bureau included Alice Moore, Bureau Chief; David Beck; Richard Cole; Kirsten Engel; Kristy Phillips; Isabel Silva; Linda Tomaselli; and Rose Ursino.

## CIVIL RIGHTS AND CIVIL LIBERTIES DIVISION

The Civil Rights and Civil Liberties Division enforces the Massachusetts Civil Rights Act (MCRA). The MCRA authorizes the Attorney General to seek injunctive relief when threats, intimidation, or coercion based on an individual's race, color, national origin, ethnic background, gender, sexual orientation, disability, age, or religious affiliation interfere with the exercise of that person's civil rights. A violation of a civil rights injunctive order constitutes a criminal offense, punishable by a maximum of 10 years in a state prison if the victim suffers bodily injury, or up to two and one half years in a correctional facility if no bodily injury results.

Division staff continued to participate in the Working Group's task forces to formulate and implement joint enforcement initiatives in five substantial areas: employment discrimination, bias-related crimes, housing discrimination, mortgage lending discrimination, and discrimination in public accommodations based on disabilities.

Members of the Civil Rights and Civil Liberties Division included Cathy Ziehl, Division Chief; Richard Cole, Senior Counsel; Patricia Correa; Richard Gordon; Phillip Jordan; Rosalind Kabrhel; Jennifer Keating; Maria MacKenzie; Tina Matsuoka; Brian Monahan; M. Julie Patino; Kathleen Quill; Rene Reyes; Anthony Rodriguez; and Amanda Ward.

### SIGNIFICANT CASE SUMMARIES

#### POST-SEPTEMBER 11TH BACKLASH

This year, the Civil Rights Division used the MCRA aggressively to respond to the spate of violence directed at persons actually, or perceived to be, of South Asian or Middle Eastern ancestry or of the Muslim or Sikh faith in the aftermath of the terrorist attacks on September 11, 2001.

- In re: Jeffrey Lizotte, Craig Jennings, and a Juvenile (Bristol Superior Court) The division obtained a preliminary injunction on September 28, 2001 against three youths (including one juvenile) who firebombed a Somerset convenience store owned by a person they believed to be from the Middle East but who was actually of Indian descent, in retaliation for the September 11th terrorist attacks.

- Commonwealth v. William Hamizides (Middlesex Superior Court) The division obtained a preliminary injunction on November 19, 2001 against William Hamizides, who went into the Belmont store of a Greek woman and mistakenly perceived her to be of Arab descent, spewed racial epithets and threats, and attempted to run the woman and her nephew over with his car.
- Commonwealth v. Amy Lynn Bowman, et al. (Suffolk Superior Court) The division obtained a preliminary injunction against the defendants on March 12, 2002 for threatening and physically assaulting an American citizen of Iranian descent in retaliation for the events of September 11th.
- Commonwealth v. Scott Leader (Suffolk Superior Court) The division filed an MCRA case on December 20, 2001 against Scott Leader following allegations that he entered a Dunkin' Donuts in South Boston and threatened a store employee of Iranian descent with physical violence, threw an object at him, and called him a terrorist and other racial epithets.

### RACIAL, NATIONAL ORIGIN, AND RELIGIOUS BIAS

The division addressed and responded to violence motivated by bias against a victim's race, national origin, or religion.

- Commonwealth v. Houlihan (Suffolk Superior Court) The division obtained summary judgment granting permanent injunctive relief against the defendant in this case alleging assault and racially charged threats against a Charlestown family on October 17, 2001.

### INTERNET-BASED MCRA VIOLATIONS

An increasing number of complaints to the division involved use of the Internet for engaging in conduct that violates the MCRA.

- Commonwealth v. Lutz (Middlesex Superior Court) The division requested a preliminary injunction on June 27, 2002 in this case filed against a male North Reading High School student after he sent violent e-mails to a co-student containing explicit detailed threats of violence to her, some other female students, and the mother of one of the students.

## ANTI-GAY BIAS

The division is committed to combating hate crimes directed at individuals based on their actual or perceived sexual orientation.

- Commonwealth v. Michael Avila (Bristol Superior Court) A final consent agreement was filed on September 12, 2001 following allegations of anti-gay violence arising from a 1997 incident in which a gay man alleged the defendant attacked him at a rest stop while he was waiting to use the pay phone.

## SEXUAL ABUSE BY CLERGY

The division investigated allegations of sexual abuse by priests in the Roman Catholic Archdiocese of Boston and the failure of Archdiocese officials to take appropriate action to protect children. The Division Chief regularly met with Archdiocese officials to encourage the Archdiocese to take certain immediate remedial measures and met with members of the Cardinal's Commission for the Protection of Children to provide comments to, and advocate for, further child protection provisions during the development of the Recommendations for Policies for the Prevention of Child Abuse and the Response to Allegations of Abuse. The division advocated for accountability provisions, zero tolerance for sex abusers, reporting of sex abuse to law enforcement, oversight and monitoring of priests previously removed by the Archdiocese for sex abuse, and extensive training of parents, children, clergy, and non-clergy in identifying and preventing child sexual abuse.

## EMPLOYMENT DISCRIMINATION

Since 1996, the Employment Discrimination Project has focused its efforts on addressing allegations of systemic employment discrimination practices in the Commonwealth. The project investigates allegations of discrimination or harassment (race, sex, ethnicity, national origin, age, sexual orientation) in order to determine whether a particular employer or industry is engaged in a pattern and practice of discrimination, affecting substantial numbers of employees in Massachusetts. Members of the division also participated in employment-related education, training, and outreach efforts, and filed briefs on important legal issues in the appellate courts of Massachusetts.

- Commonwealth v. UNICCO The division, working with the Equal Employment Opportunity Commission and the Massachusetts Commission Against Discrimination, executed a final Conciliation Agreement in this matter alleging sexual harassment of primarily non-English-speaking female cleaners by male supervisors of UNICCO and inadequate preventive and corrective company policies and procedures. This case settled for \$1 million: \$500,000 distributed among seven female employees who claimed to have been subject to sexual harassment and \$500,000 toward a claimants fund. The settlement also required UNICCO to hire an independent consultant to overhaul its employment policies and procedures and an independent monitor to oversee implementation of the changes.
- Massachusetts Bay Transportation Authority The division executed an extension on January 31, 2002 of this historic, court-enforceable agreement entered into in February 1997 with the MBTA and 26 of its 27 labor unions to end years of alleged violations of state and federal fair employment laws and to protect employees from future discrimination, harassment, and retaliatory conduct, which would otherwise have expired in February 2002. The division reviewed and analyzed Holland & Knight's Final Report (Review, Assessment, and Recommendations for Enhancement of the MBTA's Office of Organizational Diversity and Civil Rights and Related Matters) and other compliance-related documents and information, and identified eight areas of continued material non-compliance which will be addressed and which the division will continue to monitor.
- Commonwealth v. Bull HN Information Systems, Inc. (United States District Court) The division's Employment Discrimination Project, along with the Equal Employment Opportunity Commission, continued to actively litigate the age discrimination issues in Commonwealth v. Bull HN Information Systems, Inc. in the United States District Court. The court entered declarations and ordered relief on a number of the Commonwealth's claims in this employment case alleging that Bull HN, a large electronics company, violated the federal Older Workers' Benefits Protection Act (OWBPA) and the federal Age Discrimination in Employment Act (ADEA), when laying off its workers age 40 and older.
- Amicus Briefs The division filed *amicus curiae* briefs in two cases pending on appeal: Sahli v. Bull HN Information System, Inc., which raised the issue of whether a cause of action is cognizable under G.L. c. 151B when an employer initiates retaliatory litigation against a former employee who filed a complaint in the MCAD, and EDI Specialists, Inc. v. Steven A. Mills, which raised the issue of whether an employer can obtain contribution and indemnification from an employee accused of sexual harassment under Chapter 151B.

## EDUCATIONAL EQUITY

The division has taken the lead role in the Comfort/Bollen case, attempting to preserve the ability of local school districts to voluntarily integrate their schools under state law so that students receive the considerable benefits of learning from and with children from other races and ethnic groups, and are better prepared for success in racially and ethnically diverse workplaces and communities.

- Bollen v. Lynn School Department, et al., Comfort v. Lynn School Committee, et al. (United States District Court) In November 1999, the Commonwealth joined the Lynn School Committee as a defendant by intervening in Comfort v. Lynn School Committee, et al., which was later consolidated with Bollen v. Lynn School Department, et al., to defend the constitutionality of the state's Racial Imbalance Law and the City of Lynn's school choice plan, in effect since 1988. The division, with the Administrative Law Division, tried this case over 11 days in the United States District Court, in June 2002.

## HOUSING DISCRIMINATION

The division enforced the state's fair housing laws, which prohibit discrimination on the basis of race, color, national origin, religion, sex, sexual orientation, familial status, marital status, source of income (receipt of housing subsidy), age, or disability.

Through offering training programs and prosecuting housing discrimination cases, the division worked to modify landlord and realtor practices, to educate tenants about the right to fair treatment in the housing market, and to increase the availability of safe, affordable housing for families with young children.

- Commonwealth v. Arlington Housing Authority On July 27, 2001, the division obtained court approval of the Settlement Agreement in this case alleging that the Arlington Housing Authority failed to make a reasonable accommodation to a mentally disabled girl and failed to properly investigate claims of sexual harassment against the girl by male tenants. The case settled for \$32,500 and prohibitory and affirmative injunctive relief, including training and adaptation of new policies and procedures.
- Commonwealth v. Hunneman & Co. and Ivanova (Worcester Superior Court) Final Judgment by Consent was filed on November 14, 2001 in this case alleging discrimination on the basis of race and color for failure to convey a black prospective purchaser's bid to buy a house,

prohibiting submission of a higher offer, and refusing to negotiate. Case settled for \$27,500 in damages and prohibitory and affirmative injunctive relief.

- Commonwealth v. Charlotte Troy (Middlesex Superior Court) Final judgment was entered on January 18, 2002 in this case alleging discrimination based on disability where the landlord unlawfully evicted the plaintiff while he was in the hospital receiving medical treatment. Case settled for \$30,000 and injunctive and affirmative relief.
- Commonwealth & Shauna Lynn v. Richard Kowalski & Columbia Delta Co. (Western Division, Housing Court) Consent decree filed in this case alleging that the defendants made discriminatory statements indicating a preference against renting to a family with children, imposed different terms and conditions on the tenancy because young children shared the rental premises, and retaliated against the complainant by initiating eviction proceedings against her when she complained about the discriminatory practices. Case settled for \$25,000 and affirmative injunctive relief.
- Commonwealth v. Quincy Housing Authority (Norfolk Superior Court) Settlement Agreement and Stipulation of Dismissal entered on September 27, 2001 in this case alleging that the Quincy Housing Authority failed to investigate claims of sexual harassment of a tenant by one of its employees.
- Commonwealth v. Douglas King Builders, Inc. (Bristol Superior Court) Settlement of case filed in December 2001 in which an African-American college student alleged that the defendants refused to renew his lease because of his race/color. Case settled for monetary relief and limited affirmative injunctive relief.
- In re: Norwood Garden Apartments, Chestnut Hill Realty This case, which involved allegations of housing discrimination against a Section 8 recipient, was settled before filing in court for \$3,000 and injunctive and affirmative relief on February 26, 2002.
- In re: Betty and George Strickland v. AAA Apartment Rentals Settlement, before suit, was entered into on June 19, 2001 for \$4,000 in damages with both affirmative and prohibitory injunctive relief in this case alleging discriminatory failure of a rental agent to lease an apartment to African-American complainants based on their race, color, and status as recipients of public assistance.

- Commonwealth v. Rolls Realty (Middlesex Superior Court) Final Judgment by Consent in this housing discrimination case based on familial status, in which the plaintiff alleged that defendant refused to rent her an apartment because she had a child under the age of 6. Case settled for money damages and prohibitory and injunctive relief.

## REPRODUCTIVE CHOICE

The division worked to safeguard the right to reproductive choice, including outreach to police departments in jurisdictions containing a free-standing reproductive healthcare clinic to offer training on the buffer zone law, G.L. c. 266, Section E½.

- McGuire v. Reilly (First Circuit Court of Appeals, United States District Court). The division continued to defend against this complaint filed in federal district court challenging the facial constitutionality of the state buffer zone law, G.L. c. 266, Section 120E½. The First Circuit reversed the District Court's ruling of November 20, 2000, declaring the statute unconstitutional and preliminarily enjoining its application. The division continued to defend the remaining "as applied" challenge to the constitutionality of the statute still pending in the District Court.

## PUBLIC ACCOMMODATIONS

The division enforced the laws ensuring the right of the citizens of the Commonwealth to equal access to places of public accommodation, regardless of race, color, religion, national origin, ethnic background, gender, sexual orientation, or disability.

- Commonwealth v. Haverhill Country Club (Appeals Court, Suffolk Superior Court) The division continued to respond to challenges by Haverhill Golf & Country Club (HCC) to the October 1999 jury verdict of nearly \$2 million awarded to female Club members in this gender discrimination case, and the Suffolk Superior Court's order in January 2000. The court found that HCC engaged in a pattern and practice of gender discrimination against its women members and entered a permanent injunction, as requested by the division, which ordered HCC to cease discriminating against female members of the Club. In July 2001 the division opposed HCC's third motion for reconsideration in its request for a new trial and asked the Superior Court to hold Haverhill Country Club in contempt for violating the court's earlier affirmative injunctive

relief. The division also opposed the Club's appeal to the Appeals Court seeking to overturn the jury verdict and court decisions.

- In re: Lobster Boat Restaurant The division settled this matter in which it alleged that Lobster Boat, a restaurant on the Cape that is open during the spring and summer, discriminated against several mentally and physically disabled patrons from the Fernald Center who were on a summer outing, by refusing to serve them. Lobster Boat agreed to provide a \$5,000 meal credit for Fernald Center and to contribute \$7,500 to the Fernald trust fund for vacation trips. Lobster Boat also agreed to train staff on disability issues and develop policies and procedures for addressing reasonable accommodation requests of persons with disabilities.
- In re: Portuguese-American War Veterans Club (MCAD) The division filed a complaint alleging sex discrimination in a place of public accommodation when the Portuguese-American War Veterans Club told a female candidate for Peabody City Council that, although all the male candidates for city council were invited to the monthly dinner, she would not be allowed to attend the dinner because it was restricted to men only.

## OUTREACH, EDUCATION, AND TRAINING

### POST-SEPTEMBER 11TH

The Attorney General collaborated with other governmental and non-governmental agencies and organizations to respond immediately and effectively to hate crimes in the aftermath of the September 11th attacks.

Post-September 11th Hate Crimes Working Group Immediately after the September 11th attacks, the Attorney General organized a meeting of the affected communities with state and federal law enforcement agencies and civil rights groups. More than 100 leaders attended the meeting. Out of this initial meeting, the post-September 11th Hate Crimes Working Group was organized, consisting of members of the affected populations, state and federal law enforcement agencies, and civil rights groups. The Working Group broke into subcommittees and regularly met to discuss initiatives and actions to address hate crimes and acts of discrimination and to increase cultural understanding of the customs and traditions of Muslims and Sikhs. As part of these efforts, the division embarked upon an ambitious path directed at addressing hate crimes

through outreach to, and the training and education of, (1) law enforcement, (2) school officials, and (3) members of the affected communities in Massachusetts on hate crime identification, response, investigation, and prevention for this targeted population.

**Hate Crimes Training of North Shore Law Enforcement Officers** The statewide hate crimes training team held hate crimes trainings for police officers from municipal and college police departments on the North Shore and Berkshire County, and delivered the national hate crimes training module, with modifications to address the aftermath of September 11th.

**Hate Crimes Training for Civil Rights Officers Serving Communities with Muslim and Arab Communities** On April 24, 2002, the division held a daylong hate crimes training of civil rights officers designated by departments who serve significant numbers of Arabs and Muslims in their communities at the Norwood Police Academy Training Facility. The training emphasized cultural and post-September 11th matters of concern for Arab and Muslim communities in Massachusetts.

**Promoting Tolerance and Respect: A Symposium on Addressing Hate Crimes, Discrimination, and Harassment** The Attorney General organized a symposium held on April 20, 2001 in Lowell and directed at the Middle Eastern, South Asian, Sikh, and Muslim communities affected by post-September 11th backlash to establish links between these communities and law enforcement and educate affected communities on their civil rights under the law.

**City of Springfield Violence Prevention Task Force** Western Massachusetts Division Chief Janice Healy co-chaired this task force, which held a "Cultural Awareness/Know Your Rights" event in January 2002 focused on civil rights issues in the aftermath of the September 11th attacks.

## THE MASSACHUSETTS HATE CRIMES TASK FORCE

Since its inception, the Massachusetts Hate Crimes Task Force has helped law enforcement officials to more effectively coordinate enforcement activities and share information and expertise on combating and prosecuting hate crimes in the Commonwealth. The Task Force is now made up of over one hundred law enforcement officers and prosecutors, community leaders, civil rights advocates, human rights commission leaders, victim assistance professionals, hate crime researchers, civil rights trainers,

educators, school diversity/tolerance curriculum specialists, and others who have been working on hate crime-related issues locally, statewide, or nationally. The Task Force continued to meet over this year.

**PowerPoint Training Program** The Central Massachusetts Division developed a comprehensive PowerPoint program on the MCRA that it has presented to a variety of audiences, including students at the North Reading High School in February 2002, the City of Worcester City Managers Office in January and March 2002, and social service agencies.

## CIVIL RIGHTS IN THE SCHOOLS

The division focused on ensuring the civil rights of students attending schools in the Commonwealth. The division provided educational training to students, teachers, and administrators on hate crimes and discrimination, as well as sexual, racial, national origin, and religious harassment in the schools, including training programs to school administrators and teachers on their liability for failure to properly respond to hate crime and harassment incidents in the schools. Programs also included how to create comprehensive civil rights protection programs for students in middle and high schools and respond effectively to hate crimes on college and university campuses.

**Attorney General-Sponsored Civil Rights in Schools Conferences** The division organized and presented *A Prerequisite for Safe Schools: Protecting Students from Harassment and Hate Crimes*, the third and fourth in a series of training conferences. The conferences, held on October 11, 2001 for school districts and police from Norfolk and Worcester counties and on March 13, 2002 for Barnstable, Plymouth, and Bristol counties, helped school officials throughout Massachusetts learn to effectively use the publication *Protecting Students from Harassment and Hate Crime – A Guide For Schools*, jointly developed by NAAG's Civil Rights Working Group and the Department of Justice's Office for Civil Rights. Both the training and the publication were revised to reflect concerns for the safety of students of actual or perceived Arab, Middle Eastern, or South Asian ancestry, and children of the Muslim or Sikh faith.

**Bullying/Harassment/Hate Crimes Training Program** The Western Massachusetts Division, in collaboration with the Governor's Hate Crimes Task Force and the Springfield Police Department, presented a training program on January 17, 2002 to vice principals in Springfield on hate crimes, harassment and bullying, and the development of consistent and effective reporting systems and investigation processes.

## CIVIL RIGHTS AND POLICE

In a collaborative effort to promote civil rights, assist police departments, and provide departments with technical assistance, the division offered and provided civil rights training to law enforcement covering issues of hate crimes identification, response and prosecution, civil liability, sexual harassment, and racial and cultural awareness.

The division also investigated allegations of police misconduct, and police departments regularly consulted with the division for assistance on internal civil rights investigations. The division has closely worked with departments to ensure that they take appropriate remedial steps when credible evidence is found which substantiates civil rights complaints.

**Racial Profiling** The division played an increasingly important role in addressing concerns of improper and illegal motor vehicle stops and street encounters, including racial profiling. This is an issue where law enforcement nationally as well as in the Commonwealth are increasingly being requested to play an affirmative role. Members of the division helped organize, in conjunction with advice from law enforcement leaders, the Attorney General's Working Group on Racial Profiling to develop a uniform approach to address racial profiling. This working group, composed of law enforcement leaders and community activists, met at various points over the past year. Division staff also participated in the Executive Office of Public Safety Working Group on Racial Profiling and in the Massachusetts Minority Police Officers' Association racial profiling conference.

## DISABILITY RIGHTS

The Disability Rights Project made extensive efforts to protect the rights of individuals with disabilities throughout the Commonwealth, including litigation, assistance for individuals, training, publications (*Commonly Asked Questions: Employment Rights of Individuals with Disabilities* and *Fair Housing Rights of Individuals with Disabilities*), and speaking engagements.

**Ensuring Equal Access to Private Businesses** In its ongoing effort to make retail and department stores more accessible for customers with disabilities, the Disability Rights Project continued to monitor the Assurance of Discontinuance with CVS Stores, which requires them to remedy the violations of turning radius and aisle width requirements through review of audit reports and site visits.

Access to Schools for People with Disabilities The Disability Rights Project also sought to ensure access compliance for individuals with disabilities in the design and construction of new schools. An advisory on accessibility in new school construction was sent to Massachusetts' school superintendents on November 30, 2001.

### CIVIL RIGHTS INITIATIVES WITH NAAG

Division members continue to serve in leadership positions in the National Association of Attorneys General's (NAAG) Civil Rights Working Groups, consisting of representatives of state Attorneys General from throughout the country working to enhance the cooperative relationship between the states and the U.S. Department of Justice and the Equal Employment Opportunity Commission in civil rights enforcement. In early October 2001, the Division Chief helped organize a meeting in Washington of civil rights members of various Attorneys General's Offices and members of federal agencies, including the Department of Justice and the EEOC, to share information and to discuss methods of addressing backlash and violence directed at persons of Middle Eastern and South Asian descent or of the Muslim or Sikh faith.

## **CONSUMER PROTECTION AND ANTITRUST DIVISION**

The Consumer Protection and Antitrust Division (CPAD) is the leading voice in the Commonwealth for consumers who have been disadvantaged by unfair or deceptive acts or practices in the marketplace. The division enforces both state and federal consumer protection and antitrust laws by investigating and prosecuting civil cases involving a wide array of consumer and competition issues. CPAD also promulgates consumer protection regulations, mediates consumer complaints against businesses, and provides information to the public through Attorney General Reilly's Consumer Hotline, advisories and information on the Attorney General's Web site, distribution of brochures on a number of issues affecting consumers, and speaking engagements across the Commonwealth.

Through the Consumer Complaint and Information Section (CCIS), the division acts as a resource for consumers and businesses, providing information, direction to additional resources at the state and federal levels, and free mediation services to consumers who have encountered a problem in a purchase of consumer goods or services. The division also provides grants to a statewide network of 19 Local Consumer Programs (LCP) and nine Face-to-Face Mediation Programs, to furnish information and mediation services across the state. The information gathered by CCIS and the LCPs is available to the division for review and evaluation for possible legal action. Many cases brought by the division over the years have

had their genesis in CCIS and the LCPs, and patterns of unfair or deceptive conduct revealed by these cases have also served as the basis for draft legislation (including anti-SPAM, identity theft, and telemarketing fraud) and regulations (including travel services and long-term care facilities).

In addition to investigating and prosecuting abuses within Massachusetts, the division also addresses regional disparities, as well as consumer protection and antitrust issues that may have a nationwide effect. The division works closely with other states to investigate and file cases addressing unfair or deceptive conduct, or antitrust issues, in areas such as predatory lending, privacy, health fraud, tobacco sales, pharmaceutical pricing, and high-tech industries.

During Fiscal Year 2002, CPAD staff included Freda Fishman, Division Chief; Jesse Caplan, Deputy Division Chief, named Chief in November 2001; Chris Arabia; Michael Atleson; Steve Bandar; Andrea Breton; Jack Christin; Emily Coleman; Arlie Costine-Scott; James D'Amour; Barbara DeSouza; Mary Freeley; Jennifer Galante; Brian Goodwin; Michael Hering; Stephanie Kahn; Glenn Kaplan; Brenda King; Mark Kmetz; Pam Kogut; Diane Lawton; Ronnie Lee; Carmen Leon; Betty Maguire; Mary Marshall; Lois Martin; Rose Miller; David Monahan; Rory Neal; Janis DiLoreto Noble; Margaret O'Brien; Mark O'Connor; Donna Palermino; Astrid Pamameno; Julie Papernik; Judy Risch; Jessica Roberts; Betsy Sawyer; Lisa Senay; Ransom Shaw; Andria Simon; Lorraine Smith; Michelle Stone; Christine Sullivan; Erika Tarantal; Judy Whiting; Geoffrey Why; Marvina Wilkes; and Hermen Yee.

## SIGNIFICANT CASE SUMMARIES

CPAD filed or concluded the following significant cases in Fiscal Year 2002.

### HEALTH CARE

- **Mylan Laboratories** (U.S. District Court, DC) On February 1, 2002, the federal district court approved a multi-state settlement against generic drug manufacturer Mylan Laboratories for fixing the prices of lorazepam and clorazepate (drugs used to treat Alzheimer's and other conditions). The settlement provided consumers with 100% restitution and reimbursement for overpayments made by the Commonwealth's Medicaid program. In June 2002, over 6,000 Massachusetts consumers received a total of \$676,717 in restitution, and the Commonwealth's Medicaid program received \$246,270 in reimbursement.

- Bristol-Myers Squibb (BMS) Litigation (U.S. District Courts, DC and NY) In November 2001, CPAD joined over 20 other state Attorneys General in filing suit against BMS relating to improper attempts to extend its patent monopoly over its Buspar anti-anxiety medication. The lawsuit, filed in federal court in New York, included allegations that BMS perpetrated fraud on both the Patent Office and the FDA in its attempts to bar generic competition. In June 2002, CPAD joined approximately 30 other state Attorneys General in filing suit against BMS in federal court in Washington, DC, in connection with similar allegations relating to its Taxol cancer drug.
- Commonwealth v. Bristol Nursing Home (Suffolk Superior Court) In September 2001, this nursing home, facing financial difficulties, filed for bankruptcy. In cooperation with the Department of Public Health, CPAD was successful in obtaining a court order appointing an independent receiver to oversee the orderly closure of the facility and safe transfer of residents to other facilities. The division also continued to prosecute its civil action against the facility for regulatory violations and financial abandonment.
- Commonwealth v. Shirley Manor/Greenwood Terrace (Suffolk Superior Court) In June 2000, in cooperation with the Department of Public Health, CPAD was successful in obtaining a court order appointing an independent receiver to oversee the orderly closure of the Greenwood Terrace Nursing Home in Brockton, because of a jeopardy situation involving substandard care provided to the residents. In January 2001, CPAD obtained a default judgment against the company for approximately \$1 million in civil penalties.

## INTERNET AND HIGH TECH

- Commonwealth v. Robert Todino, d/b/a RT Marketing (Suffolk Superior Court) In August 2001, CPAD filed an Assurance of Discontinuance against Robert Todino and RT Marketing for deceptive claims in e-mail solicitations involving offers of "free" government grants or "detective" software that would allegedly enable the purchaser to discover private information about others. The Assurance included a \$5,000 penalty, prohibitions on future deceptive acts, and refunds to all consumers who lost money.
- Commonwealth v. Sharon Hunt (Worcester Superior Court) In October 2001, the court entered a default judgment against Sharon Hunt, ordering her to pay \$5,603 in restitution and \$5,000 in civil penalties for fraudulent practices in connection with selling items on Internet auction sites.

## PRIVACY

- Egghead.com, Inc. (United States Bankruptcy Court, San Francisco, CA) In September 2001, CPAD attorneys acted as lead counsel for a number of states (California, Maryland, Vermont, Kansas, Iowa, Pennsylvania, Nevada, Oregon, and Florida) in filing and arguing objections before the United States Bankruptcy Court in San Francisco to motions of Egghead.com to sell its customer database to the highest bidder, along with other of its Web site assets. Egghead.com's Web site promised consumers that it would never share information with third parties. CPAD took the position that the sale or transfer of consumer information to a third party therefore required affirmative consent by the consumer through an "opt-in" notice. In December 2001, Egghead assets were bought by Amazon.com, which agreed, in a settlement, for a third party to hold the customer list until customers provided opt-in consent.
- Essential.com, Inc. (United States Bankruptcy Court, Boston) Essential.com operated a Web site from which consumers could purchase Essential's services, and had a privacy policy posted that promised consumers it would not share or sell their customer information except in certain circumstances. The company filed for bankruptcy protection, and in June 2001, CPAD and the Utilities Division filed objections to the transfer of the customer information. CPAD obtained a stipulation endorsed by the Bankruptcy Court that required the successful bidder to notify consumers in the manner contemplated by federal and state law about the termination of services by Essential. The order also provided other consumer privacy protections.
- Commonwealth v. Source One/Peter Easton (Suffolk Superior Court/Supreme Judicial Court) On January 19, 2000, after a full trial, judgment was entered against information broker Peter Easton and his company, Source One, for using deceptive practices to obtain private financial information of hundreds of Massachusetts consumers without their consent or knowledge. The defendants appealed the judgment, but the Supreme Judicial Court, in February 2002, affirmed the trial court judgment against the defendants, including penalties and costs totaling \$610,000. The division is seeking to execute on that judgment.

## ELDERS

- Caron Funeral Home (United States bankruptcy court, Worcester) In July 2001, CPAD assisted in finalizing a settlement and Bankruptcy Court order resolving claims against this funeral home for failing to keep in trust pre-need funeral deposits paid by elderly consumers, as required

by Massachusetts law. The resolution included, among other things, refunds totaling \$130,000 for 31 consumers.

- Commonwealth v. Bick & Curry Funeral Home (Suffolk Superior Court) In February 2002, CPAD filed suit against the Bick & Curry Funeral Home seeking restitution for consumers who had paid over \$98,000 in pre-need funeral deposits after those deposits could not be accounted for, in violation of state law.

## CONSUMER CREDIT AND PREDATORY LENDING

- Commonwealth v. First Alliance Mortgage Company (FAMCO) (Suffolk Superior Court/United States Bankruptcy Court, California) In 1998, CPAD filed a lawsuit against FAMCO, a sub-prime mortgage lender, for charging usurious interest rates and fees (points in excess of 20% of the loan), and doing so through deceptive sales practices. With assistance from the state Division of Banks, CPAD obtained a preliminary injunction preventing the company from violating Massachusetts law. The company, which operated a branch office in Wellesley in 1997 and 1998, closed its doors soon after. In 2000, after FAMCO filed for bankruptcy protection in California, CPAD continued to pursue the mortgage lender to seek restitution for harmed consumers. Five other states, the Federal Trade Commission (FTC), and several private plaintiffs also joined the federal litigation. In March 2002, FAMCO agreed to settle the charges by paying \$60 million in restitution to consumers nationwide. As a result of the settlement, over 275 Massachusetts borrowers will be receiving substantial restitution.
- Commonwealth v. Triad Discount Buying Services (Suffolk Superior Court) In this multi-state/FTC case, defendants were alleged to have deceptively imposed unapproved charges on consumers' credit and debit cards for discount buying and travel clubs. A settlement was reached and filed in October 2001, which provided partial refunds for over 5,000 Massachusetts consumers, totaling \$164,204.

## TELEMARKETING AND SWEEPSTAKES

- Commonwealth v. Publishers Clearing House (PCH) (Suffolk Superior Court) On October 10, 2001, a Consent Judgment against PCH was entered in Superior Court, settling allegations of unfair and deceptive conduct in the operation of PCH's sweepstakes. The settlement,

involving Massachusetts and 25 other states, required PCH to pay a total of \$34 million toward restitution, costs, and fines, and to dramatically change the way it conducts its solicitations for the sale of magazines and other goods, by "sweepstakes" offer, to the benefit of all consumers. Massachusetts victims will be sharing approximately \$800,000 in restitution, and the Commonwealth will be receiving over \$100,000 in fees and costs.

- Commonwealth v. Allied Lighting Products, Inc. (Suffolk Superior Court) CPAD first filed a lawsuit against Allied in 2000, alleging violations of the Massachusetts Consumer Protection Act and the federal Telemarketing Sales Rule for deceptive telemarketing practices in selling overpriced light bulbs to businesses across the country. In March 2001, CPAD obtained a preliminary injunction against Allied ordering the company to cease deceptive telemarketing practices and record its sales calls. Rather than attempt to comply with the court's injunction, Allied elected to shut down operations in April 2001. In May 2002, the company agreed to a Consent Judgment, filed in Suffolk Superior Court, requiring it to pay \$550,000 in civil penalties and costs, and \$50,000 in restitution.

## OTHER CONSUMER PROTECTION

- Commonwealth v. Stop & Shop (Suffolk Superior Court) In October 2001, CPAD obtained an Assurance of Discontinuance, filed in Suffolk Superior Court, enjoining Stop & Shop's deceptive use of the USDA shield in advertisements for poultry and other products. Stop & Shop also agreed to a civil penalty of \$75,000 and a payment of \$20,000 to the Local Consumer Aid Fund.
- Commonwealth v. Peapod (Suffolk Superior Court) In December 2001, Stop & Shop, through its online/home delivery sales subsidiary, Peapod, agreed to discontinue certain advertising policies regarding its pricing of items offered for sale on the Peapod Web site. The settlement, filed as an Assurance of Discontinuance in Suffolk Superior Court, required Peapod to pay \$50,000 in penalties and fees to the Commonwealth and \$200,000 in restitution to consumers who were charged more than the in-store Stop & Shop price for items purchased through Peapod.
- Commonwealth v. Uni-Kleen International (Suffolk Superior Court) In February 2002, Uni-Kleen International, New England's Finest Carpet Cleaners, and their principal, Ed Pero, entered into a Consent Judgment resolving allegations that they had participated in a bait-and-switch scheme, targeting many elders, involving carpet and duct cleaning services. The defendants offered carpet and duct cleaning at low "per room" fees but then engaged in sales practices that

caused consumers to pay many hundreds of dollars more for the services. The Consent Judgment required Uni-Kleen to pay \$80,000 in restitution to harmed consumers and \$40,000 to the Commonwealth in civil penalties.

- Commonwealth v. Dean's Home Furniture and Planned Furniture Promotions (Suffolk Superior Court) In May 2000, CPAD filed suit against a furniture retailer and furniture liquidator for running a deceptive store closing sale, alleging violations of the state's "going out of business" statute. In December 2001, defendants entered into a Consent Judgment that required them to agree to significant injunctive relief, as well as payments of \$230,000 in restitution to over 2,000 consumers and \$40,000 in civil penalties and costs.
- Commonwealth v. The Mandatory Poster Agency (Suffolk Superior Court) In 2001, CPAD filed an Assurance of Discontinuance against this Michigan-based company that deceptively marketed posters for businesses that provided notices required by law on wages and hours and other working conditions. Solicitations led complainants to believe that the company was somehow connected to a government agency.
- Commonwealth v. Lord & Lady Bridal (Suffolk Superior Court) In February 2002, CPAD filed suit against the owners of a Belmont bridal shop who shut down without warning, leaving 23 area brides and bridesmaids with either the wrong dress or deposit slips for dresses that were never delivered. In April 2002, the defendants entered into a Consent Judgment and agreed to provide complete refunds, totaling over \$5,000, to all harmed consumers.
- Commonwealth v. Firestone (Suffolk Superior Court) In November 2001, acting with approximately 40 other states, CPAD filed an Agreed Final Judgment with Bridgestone/Firestone, Inc., resolving claims that the company sold defective tires and then made misrepresentations during the tire replacement process. Under the terms of the judgment, Bridgestone/Firestone agreed to provide consumer education, including clear and conspicuous tire safety information, on the tire sidewall or invoices. The company also paid \$530,000 to the Local Consumer Aid Fund.

## ANTITRUST

- Microsoft Antitrust Litigation (United States Circuit Court/United States District Court, DC) CPAD continued to participate in this ongoing multi-state and Department of Justice (DOJ) litigation against Microsoft for monopolizing the operating systems market and other

predatory practices. On June 28, 2001, the D.C. Circuit unanimously affirmed the trial court's finding that Microsoft had engaged in illegal monopolistic practices, but vacated the trial court's decision to break up the company and remanded to the trial court for further proceedings on remedies. In November 2001, DOJ and several states agreed to a proposed settlement with Microsoft. Massachusetts and eight other states refused to settle and then filed their own remedies proposal with the court. Following an expedited discovery schedule and several legal motions, federal district court Judge Colleen Kollar-Kotelly, beginning on March 18, 2002, held a 32-day evidentiary trial on an appropriate antitrust remedy. At the conclusion of the trial, Judge Kollar-Kotelly issued a legal decision affirming the states' authority to pursue stricter remedies. As of the end of Fiscal Year 2002, the court had not yet rendered a decision on the appropriate remedies.

- Contact Lens Antitrust Litigation (U.S. District Court, FL) On May 22, 2001, Massachusetts and 31 other states announced a settlement with Johnson & Johnson, resolving claims that the company, along with Bausch and Lomb and an optometrists' association, had engaged in an illegal antitrust conspiracy that prevented consumer access to discount contact lenses. The settlement obtained final court approval later in the year. The settlement followed a March 2001 trial against Johnson & Johnson brought by the states. The \$60 million settlement requires Johnson & Johnson to make \$30 million available in cash payments to consumers and \$30 million in guaranteed consumer benefits.
- Suiza Milk/Stop & Shop Transaction (U.S. District Court, MA) On July 9, 2001, CPAD, along with the Attorneys General in Connecticut and Vermont, obtained a Consent Judgment against Suiza and Stop & Shop, stemming from their agreement relating to the processing and sale of milk. The Consent Judgment, which was joined by other New England states, ordered Suiza to make available 30 million gallons of its milk processing capacity to competitors, which should help increase price competition in the school milk bidding area. Suiza also agreed to pay Massachusetts \$83,000 for costs incurred in the case.
- CD Antitrust Litigation (U.S. District Court, ME) In November 2000, CPAD joined over 40 other State Attorneys General in filing an antitrust lawsuit against the major record companies and music retailers, alleging an illegal conspiracy to prevent discounting in the sale of music CDs. During this fiscal year, CPAD, as part of this multi-state effort, continued to litigate this matter.

## TOBACCO

- **Commonwealth v. Walgreens** (Suffolk Superior Court) In February 2002, Massachusetts and 40 other states resolved allegations against Walgreens pharmacy arising from its tobacco sales practices. Under the settlement, filed as an Assurance of Discontinuance, Walgreens agreed to institute procedures designed to reduce the sale of tobacco products to minors, including specific policies for hiring and training employees and a "secret shopper" program to check for underage sales. The company paid a total of \$320,000, with approximately \$10,000 paid to Massachusetts.
- **NPM Enforcement** (Suffolk Superior Court) Ten lawsuits were brought against tobacco companies identified as Non-Participating Manufacturers (NPMs) under the Tobacco Master Settlement Agreement, for their failure to comply with M.G.L. c. 94E, which requires NPMs to fund escrow accounts to pay judgments or settlements in actions brought against them by the Commonwealth. The actions sought escrow payments, civil penalties and injunctions against sales in Massachusetts.

## STATISTICAL SUMMARY

Penalties/Costs/Other Money Returned to the Commonwealth	\$1,927,028
Consumer Restitution Recovered	
CPAD/CCIS	\$1,935,806
Local Consumer Programs	\$5,090,450
Consumer Hotline Calls	
CCIS	103,075
Local Consumer Programs	200,000+
Consumer Complaints Filed	
CCIS	4,595
Local Consumer Programs	10,934

**Tobacco Settlement Payments:** The Commonwealth received more than \$304 million in Fiscal Year 2002 in payments under the 1998 tobacco litigation settlement, bringing the total amount received to more than \$873 million. CPAD attorneys closely monitor and enforce the settlement to ensure that the Commonwealth receives its full share of the annual payments.

## **SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES**

**Post-September 11th Initiatives** In the wake of September 11th, CPAD identified and addressed a number of consumer-related issues, including travel cancellation and refund policies, deceptive schemes by online marketers peddling anti-bio-terrorism and anthrax-related products, and concerns about safe mail handling. CPAD addressed these by: (1) issuing consumer advisories regarding travel cancellations and refunds (September 19, 2001), and information regarding anthrax, online purchasing of Cipro and other pharmaceuticals, and safe mail handling procedures (October 29, 2001); (2) initiating investigations into Grand Circle Travel, a major Massachusetts charter company that imposed inconsistent cancellation and refund policies, along with inadequate customer service practices, in the wake of the September 11th events, and obtaining over \$100,000 in consumer restitution; and (3) initiating a "surf" of deceptive online offers for various anthrax- and bio-terrorism-related products and treatments, and later joining both NAAG- and FTC-led efforts to identify and shut down these sites.

**Springfield Health Care Report** On October 3, 2001, the Office formally issued the Attorney General's Report to the Legislature on the Springfield Health Care Market. The report focused primarily on antitrust issues but also on issues involving Medicaid reimbursement and patient information and choice (in addition to the Charities Division issues) in the provision of hospital and other medical services. The findings and recommendations in the report serve as a guide for analyzing similar issues in other healthcare markets across the state.

**Internet Initiatives** CPAD initiated Internet Fraud Sweeps targeting companies using the Internet for lending and credit scams, weight loss scams, business and work-at-home schemes, AIDS and cancer cures, and violations of the Children's Online Privacy Protection Act (COPPA). CPAD also issued consumer advisories relating to Internet safety tips for children and parents, and tips for dealing with SPAM.

**Privacy Working Groups** CPAD worked closely with Attorneys General's Offices around the country in identifying and addressing issues relating to privacy concerns, focusing on financial and online privacy issues.

**Consumer Protection Education/Advisories** CPAD sponsored several National Consumer Week initiatives in February 2002, including a Consumer Survival Kit — Tips and Techniques in an Economic Downturn. CPAD also issued consumer alerts and warnings relating to a bogus tax refund e-mail targeted at the African-American community and an alert warning consumers about an identity fraud scheme involving a fake IRS form seeking personal information.

**Amicus Curiae** CPAD submitted two *amicus curiae* briefs to state courts, including a brief in support of the consumer plaintiffs in the Ciardi v. F. Hoffman-LaRoche case before the Supreme Judicial Court. In February 2002, the SJC, consistent with the position argued by the Attorney General's Office, held that indirect purchasers could sue for damages under M.G.L. c. 93A based on antitrust claims. In Coleman Herman v. Home Depot, the Appellate Court, consistent with the Attorney General's position, affirmed the consumer's authority to sue for violations of the Attorney General's Item Pricing Regulations. CPAD also was involved in the Office signing on to additional NAAG-sponsored multi-state *amicus curiae* briefs.

**Training of Local Officials on Manufactured Housing Law** CPAD held training sessions on manufactured housing law for local officials in Wareham on June 27, 2001, in Marlborough on September 26, 2001, and in Plymouth on September 28, 2001. The training sessions addressed the annual manufactured housing licensing process, utilities such as water or sewerage systems, oil tanks, and other health and safety concerns in manufactured housing communities. The sessions also addressed the Manufactured Housing Act, the Attorney General's regulations, and the comprehensive *Attorney General's Guide to Manufactured Housing Community Law*.

## OUTREACH, EDUCATION, AND TRAINING

**Consumer Complaint and Information Section (CCIS)** CCIS mediated consumer complaints filed against businesses that may have engaged in unfair or deceptive acts or practices. In Fiscal Year 2002, the section received and responded to 103,075 telephone calls and mediated over 3,000 consumer complaints, recovering \$661,925 for consumers in the Commonwealth. CCIS also provided consumer information on all manner of issues by responding to telephone calls and letters, by distributing brochures, and through public speaking engagements. CCIS also responded to press inquiries concerning businesses complained against and updated its tracking system to more quickly and accurately respond to Public Records Requests concerning consumer complaints. Staff members spoke at a number of locally hosted consumer forums, addressing topics such as the Used Vehicle Warranty Law and the Lemon Law for a recent class of graduates of a technical school, hosted by the American Automobile Association, and telemarketing and financial fraud scams facing elders at a monthly meeting of seniors in Rockland, and offered brochures and complaint forms at several T-stops during National Consumer Week in February.

**CPAD Attorneys** CPAD attorneys participated as speakers and panelists in consumer education events, as well as in industry seminars and forums, on numerous issues, including identity fraud, Internet safety, predatory lending, consumer credit and repair, healthcare antitrust, telemarketing fraud, motor vehicle advertising and sales, state and federal "Do Not Call" legislation and regulations, and other consumer protection issues.

## **ENVIRONMENTAL PROTECTION DIVISION**

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The Environmental Protection Division (EPD) serves as litigation counsel on environmental issues for various state agencies, particularly those within the Executive Office of Environmental Affairs. EPD handles the Commonwealth's civil litigation to enforce environmental protection programs established by state statutes and regulations, including laws governing air pollution, water pollution, water supply, waterways, wetlands, and hazardous and solid waste. EPD also plays a key role under the Clean State Initiative to ensure that the Commonwealth's own agencies abide by state and federal environmental agencies, and in doing so the division may bring enforcement actions against those agencies in court where the Attorney General, in his enforcement discretion, deems action necessary. Based on the Office's broad authority to protect the environment of the Commonwealth, EPD initiates and intervenes in state and federal litigation, and participates in administrative proceedings before federal agencies on significant environmental issues. EPD defends lawsuits challenging the actions of state environmental agencies and the legality of state environmental laws.

During Fiscal Year 2002, EPD handled enforcement proceedings leading to judgments requiring payments to the Commonwealth of \$1,626,510. This figure is for penalties, cost recovery, and other payments awarded in Fiscal Year 2002, whether or not actually paid in Fiscal Year 2002. In Fiscal Year 2002, EPD received actual payments totaling \$1,232,196.65 in penalties, cost recovery, and other payments. Other cases resulted in court judgments requiring private parties to undertake costly clean-ups — a savings of millions of dollars for the Commonwealth.

The Investigations Division assisted EPD primarily through locating and identifying assets of potentially responsible parties liable for paying costs incurred by the Commonwealth in the clean-up of polluted or hazardous waste sites. Investigators also located former employees and officers of defunct companies responsible in part for such violations, and reviewed, evaluated, and analyzed financial documents and prepared ability to pay analyses.

During Fiscal Year 2002, EPD staff included James Milkey, Division Chief; Frederick Augenstern; Dena Barisano; Freda Boden; Edward Bohlen; Matthew Brock; Nora Chorover; Nicole Clark; Carolyn Edwards; Benjamin Ericson; James Farrell; Dana Gershengorn; I. Andrew Goldberg; Nancy (Betsy) Harper; Carol Iancu; Matthew Ireland; Eleanor Johnson; Siu Tip Lam; Trevor Murray; William Pardee; Christine Peluso; Dawn Stolfi Stalenhoef; and Danah Tench.

## SIGNIFICANT CASE SUMMARIES

### STATE AIR POLLUTION LAWS AND REGULATIONS

- **Emission Standards** During Fiscal Year 2002, EPD was again active in enforcing state laws regarding pollution resulting from the operation of automobiles. Massachusetts is one of the few states that have taken advantage of Section 177 of the federal Clean Air Act, a provision that allows states to adopt California's stringent vehicle emissions standards. During Fiscal Year 2002, EPD handled cases against three automobile dealerships to enforce these low emissions standards: 128 Sales, Baystate Motors, and RJ Foley, Inc. EPD settled the Baystate Motors case for injunctive relief and a civil penalty of \$39,000 (\$3,000 per violation).
- **Vapor Recovery Standards** EPD was also active in defending and enforcing Massachusetts' Stage II Vapor Recovery Standards. Stage II vapor recovery systems are used to control releases of gasoline vapors when vehicles are refueled. They require gas stations to install and maintain equipment to capture vapors that would otherwise escape to the atmosphere and contribute to ozone and smog formation. In addition, a number of these substances (e.g., benzene, toluene) are toxic. Department of Environmental Protection (DEP) revisions to the Stage II vapor recovery regulations, effective in January 2001, went into effect this past January. When three industry associations challenged the regulations through a declaratory judgment action, EPD was called upon to defend the regulations.
- **Gitto Global** EPD continued the prosecution of its case against Gitto Global Corp., a plastics manufacturer's facility in Lunenburg. In this case, EPD alleges that the company violated various state environmental laws, including through bypassing its air pollution control equipment. Throughout Fiscal Year 2002, EPD pursued both discovery and settlement negotiations.

- Power Plants In May 2001, DEP adopted new emissions standards for the six older power plants in Massachusetts. EPD is defending a challenge to those regulations filed by the owner of one of the affected power plants.

## NATIONAL AND REGIONAL AIR POLLUTION ISSUES

- Ozone and Particulate Matter EPD continued to play a major role in national and regional air pollution issues. The most important national air pollution issue litigated during Fiscal Year 2002 concerned the industry's challenge to the EPA's revised standards for ozone and particulate matter, promulgated in 1997. Massachusetts was one of two states (the other was New Jersey) to intervene on behalf of EPA in litigation before the U.S. Supreme Court to defend these standards. On February 27, 2001, the United States Supreme Court rejected, by 9-0, the industry's argument that EPA's authority to issue new standards exceeded the agency's power under the Constitution. The Court also rejected the industry's argument that EPA must temper its protection of public health by taking into consideration, at the standard-setting stage, the costs of implementing the standards. Following the remand of the case, Massachusetts continued to defend the standards before the United States Court of Appeals for the District of Columbia Circuit. Whereas the proceeding before the U.S. Supreme Court concerned a constitutional challenge to the standards, the issues before the D.C. Circuit concerned industry's argument that the standards are arbitrary and capricious under the federal Administrative Procedure Act. During this fiscal year, the D.C. Circuit issued its ruling upholding the new standards.
- Heavy-duty Engine and Vehicle Pollution One of the Clinton Administration's last major environmental actions was to issue regulations to reduce heavy-duty engine and vehicle pollution. The rule is designed to reduce emissions of nitrogen oxides (which help cause smog) and particulates (small particles that lodge deep in the lungs) from diesel engines by 95%. Several industry organizations challenged EPA's Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements (65 Fed. Reg. 35429) in the D.C. Circuit, including the Engine Manufacturers Association, the American Petroleum Institute, and the National Petrochemical & Refiners Association. Because of the significance of diesel emissions in degrading the air quality of many Massachusetts neighborhoods, EPD intervened in support of EPA's rule in the U.S. Court of Appeals for the D.C. Circuit. The Court issued a ruling upholding the regulations.

- American Power Co. v. U.S. EPA EPD was instrumental in obtaining a court ruling that should reduce emissions from Midwestern and Southern power plants that contribute pollution to the State air shed. In American Power Co. v. U.S. EPA (Section 126 litigation), Massachusetts intervened in federal court to defend EPA's decision to grant a petition, under Section 126 of the federal Clean Air Act, to require EPA to impose emissions reductions upon power plants located in Midwestern states. In a May 15, 2001 ruling, the D.C. Circuit largely upheld EPA's rule requiring emissions reductions by Midwestern and Southeastern power plants but ruled in favor of certain plant-specific claims, and also directed EPA to explain an element of its decision on remedy. EPA issued a draft ruling on remand, and, following our comments, finalized that ruling. An industry challenge to that ruling is pending.
- State of Michigan v. U.S. EPA In State of Michigan v. U.S. EPA (the "NOx SIP Call" litigation), a case related to the Section 126 litigation, Massachusetts intervened to defend EPA's decision to require 22 states to amend their air state implementation plans (SIPs) to include mandatory reductions in NOx from in-state power plants. In early March, the Supreme Court let stand the decision of the U.S. Court of Appeals for the District of Columbia Circuit upholding EPA's "NOx SIP Call Rule." That rule, which EPA adopted in 1998, required 22 Eastern States and the District of Columbia to reduce emissions of nitrogen oxides (NOx) within their borders, so as to reduce the movement (transport) of NOx to downwind areas, primarily in the Northeastern States. The case continues, however, because the administrative ruling that EPA made on remand with respect to the Section 126 litigation covers the issues on remand in the SIP Call case as well. As mentioned above, that ruling is under appeal.
- New Source Review Also on the national stage, EPD continued to play a significant role in a multi-state and EPA enforcement action against a large Ohio-based power company for upgrading plants without installing Best Available Control Technology as required by the New Source Review (NSR) provisions of the federal Clean Air Act. During Fiscal Year 2002, discovery in *American Electric Power* continued. In the meantime, Attorney General Reilly urged the Bush Administration not to substantially weaken its NSR policies, as it proposed to do through a National Energy Policy proposal issued in May 2001. For example, the Attorney General testified at an EPA hearing held on July 17, 2001, and he sent several letters calling upon Vice President Cheney, Attorney General Ashcroft, and EPA Administrator Whitman to stay the course.

## ENERGY

During Fiscal Year 2002, the Attorney General submitted comments to the federal Department of Energy urging it not to roll back energy efficiency standards that DOE had set for central air conditioners and heat pumps. After DOE went forward with its plans to roll back the standards, we joined a multi-state challenge to the new regulations before the Court of Appeals for the D.C. Circuit.

## 21E ENFORCEMENT / HAZARDOUS AND SOLID WASTE DISPOSAL SITE CLEAN-UP

Under G.L. c. 21E, the Attorney General is charged with the responsibility of recovering Commonwealth funds spent cleaning up hazardous waste sites. Where possible, EPD enters into settlements with the parties responsible for the contamination to obtain their agreement to clean up the site, rather than pursuing a cost-recovery action after the state has stepped in to itself clean up the contamination. This saves the Commonwealth money up front and results in the efficient administration of site clean-ups.

- Wellesley College In Fiscal Year 2002, EPD finalized its settlement of a major 21E cost-recovery matter involving Wellesley College. This matter, which was ultimately resolved through mediation, concerned extensive contamination of the upland portion of the Wellesley College campus, including portions of the shoreline of Lake Waban, a Great Pond, by the operation of a now-defunct paint shop. Under the terms of the settlement, Wellesley College agreed to pay the costs of removing the contamination from the upland portion of the site (estimated at approximately \$28–\$30 million) and the Commonwealth agreed to contribute \$1.4 million to the clean-up of the shoreline area.
- Norwood Commerce Center In Fiscal Year 2002, EPD also finalized a settlement involving an industrial office complex known as the Norwood Commerce Center. The owners of the property agreed to clean up the site (at an estimated cost of \$1 million), pay the Commonwealth \$360,000 in penalties, and contribute \$175,000 into an escrow account to be used for future clean-up actions if later deemed necessary.
- D.B. Enterprises EPD filed suit and obtained an attachment against D.B. Enterprises, owners and operators of a large landfill in the Town of Wendell. EPD is seeking to recover millions of dollars that the Department of Environmental Protection spent to stabilize the landfill in order to prevent its catastrophic collapse.

- Mutual Oil In a case involving a release of gasoline from a gas station in Brockton, EPD alleged that Mutual Oil, the owner of the station, failed to notify the Department of Environmental Protection of the release of gas from a leaking gas tank and failed to use appropriate air-testing methods to detect the level of contaminants in an abutting home. EPD reached a settlement that required payment of a \$50,000 penalty.
- Starmet During Fiscal Year 2002, EPD filed suit against Starmet Corp. (formerly known as Nuclear Metals), a company that manufactured armor-piercing bullets and other munitions from spent radioactive fuels at a site in Concord. EPA has placed the site on the National Priority List. While the site itself is contaminated, there are also some 3,800 barrels of radioactive materials that have essentially been abandoned at the site. EPD's state court suit was filed to require the company to establish an escrow account for site decommissioning, to maintain security at the facility, and to remove the barrels. The company agreed to establish the escrow account, and the Court ordered it to continue to maintain site security while the case proceeds. EPD successfully petitioned the Court to appoint a receiver to take over the site, although that order was dissolved after the company filed for bankruptcy in South Carolina. EPD has been participating in the South Carolina bankruptcy proceedings through a Special Assistant Attorney General.
- Logan Airport EPD reached a settlement in three related enforcement cases involving a fuel spill at Logan Airport (American Airlines, MassPort, and Signature). The cases were significant in part because they were EPD's first enforcement actions based upon an alleged failure to report a *threat* of a release. The settlement required the defendants to pay \$530,000 in penalties and other payments.
- MBTA EPD filed suit against the MBTA regarding significant lead and arsenic contamination at the Readville Yard. In its complaint, EPD alleged that the T failed to clean up the site despite its statutory liability and that children were gaining access to the contaminated areas at the site. Through this case, EPD is seeking not only relief to address the specific violations, but also broad-scale relief to force appropriate institutional changes regarding how the T manages its environmental compliance issues. At EPD's urging, the Superior Court issued a preliminary injunction requiring the T to secure the site and to take the next steps toward remedying the contamination there.
- Hyde Park Landfill In Fiscal Year 2002, EPD reopened an old solid waste case involving a landfill in Hyde Park by bringing a contempt action. EPD obtained a settlement of the contempt action that included further injunctive relief and an additional penalty of \$50,000.

- JEMS of New England In November 2002, EPD filed suit for 21E regulatory violations against JEMS of New England, a company that was performing a site clean-up. EPD's complaint alleged that JEMS failed to comply with DEP orders to provide clean water to a family whose well water was contaminated. JEMS, a former petroleum supplier, delayed compliance with the orders while it sought a waiver of liability. The case is an important test of the 21E privatized clean-up program.
- Mendon Road EPD continues to pursue recovery of costs spent by the state many years ago to clean up coal-related wastes containing a compound known as ferric ferrocyanide. The so-called Mendon Road case was filed several years ago against Narragansett Electric for clean-up costs spent by the state, which now total \$10 million, with interest. EPA preliminarily determined that ferric ferrocyanide is a hazardous substance under the Comprehensive Environmental Response, Compensation and Liability Act, the federal hazardous waste clean-up law upon which Massachusetts' Chapter 21E is based. EPD submitted comments supporting EPA's preliminary ruling, which — if finalized — would allow Massachusetts to argue that it was entitled to the \$10 million currently sitting in escrow.
- 229 Main St. Limited Partnership EPD prevailed in an appeal before the First Circuit Court of Appeals involving contaminated property owned by 229 Main St. Limited Partnership in Natick. At issue was whether the Department of Environmental Protection could file a lien on the property after the owner went into bankruptcy. The Court upheld DEP's right to do so. A second appeal challenging DEP's lien is pending in the state Appeals Court.
- Boston Junk In another major 21E action, SAK Recycling (also known as the "Boston Junk" case), EPD is seeking recovery, from Boston Edison and others, of monies being spent to clean-up the site of the Boston Convention Center. In this case, EPD is working closely with the Boston Municipal Convention Center Authority and the Boston Redevelopment Authority, co-plaintiffs in the case.
- Colonial Shoppe EPD filed suit against the Colonial Shoppe, a liquor store in Hudson that EPD alleged was violating the statute known as the Bottle Bill by paying people only four cents per can or bottle redeemed, instead of the five cents required by the statute.

## NATURAL RESOURCE RECOVERY, PROTECTION, AND PRESERVATION

- Environmental Review EPD handled many cases that arose under the Massachusetts Environmental Policy Act (MEPA). In the most significant case, MassPort filed suit seeking to modify a 1976 state court injunction, issued under MEPA, enjoining the authority from constructing an additional runway at Logan Airport. In the suit, MassPort alleged that modification of the injunction was warranted because the Secretary of Environmental Affairs had certified the environmental impact report for the proposed new runway. EPD is defending the Executive Office of Environmental Affairs in this suit.
- Protection of Endangered Species and Plants In WRT v. DFW, EPD is defending actions of the Division of Fisheries and Wildlife (DFW) implementing Massachusetts Endangered Species Act (MESA). The developer of a golf course in Sturbridge brought a declaratory judgment action challenging DFW's statutory authority to require "conservation permits" for habitat alteration under MESA, as well as its authority to certify vernal pools. In an important decision, the Superior Court ruled in DFW's favor.
- Wetlands, Waterways, & Water Pollution EPD filed suit against the City of Quincy for violations of the Wetlands Protection Act. In the complaint, EPD alleged that the city built a stone revetment along the coast without complying with certain key conditions insisted upon by DEP, required by the City Conservation Commission, and agreed to by the city.

EPD filed suit regarding wetlands and solid waste violations at the Costa Farm in Fairhaven. EPD alleged that the owner of the farm and another person disposed of rotting clamshells at the farm, including in a wetlands area. EPD also alleged that wetlands had been destroyed from leachate from the clamshell pile and in other ways as well.

Together with the U.S. Environmental Protection Agency and the U.S. Department of Justice, EPD entered into a settlement agreement with the Town of Winchendon to resolve alleged violations of federal and state clean water laws and government-issued permits. Under the civil complaint and consent decree filed in U.S. District Court in Boston, Winchendon paid civil penalties totaling \$50,000 (\$35,000 to the federal government and \$15,000 to the Commonwealth) and is conducting a \$15 million upgrade of its sewage treatment system. The upgrade should allow the town to operate its sewage treatment facility in compliance with applicable discharge standards and should prevent the alleged ongoing discharge of raw sewage into the Millers River during rainstorms.

## **SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES**

### **BROWNFIELDS**

Chapter 206 of the Acts of 1998, "An Act Relative to Environmental Cleanup and Promoting the Redevelopment of Contaminated Property," otherwise known as the Massachusetts Brownfields Act, encourages the clean-up and redevelopment of Brownfields sites through both liability reforms and financial assistance. One of the liability reforms authorizes the Attorney General to enter into Brownfields Covenants that provide liability relief beyond what is otherwise available under Chapter 21E. The Brownfields Covenant Program addresses site-specific liability concerns for complex clean-ups and important redevelopment efforts.

Applications for Brownfields Covenants are assessed according to the benefits they create for local communities and the Commonwealth by: 1) creating new, permanent jobs; 2) resulting in affordable housing benefits; 3) preserving historic buildings; 4) creating or revitalizing open space; and/or 5) providing some other public benefit to the community in which the site is located.

In Fiscal Year 2002, the Brownfields Unit of the Environmental Protection Division continued to work on a number of clean-up and redevelopment projects throughout the Commonwealth. The Brownfields Unit considered several applications for Brownfields Covenants: finalized three Brownfields Covenants in Boston, Lowell, and Greenfield involving a variety of redevelopment projects, and maintained its efforts on various long-term priority projects. The Brownfields Unit also continued to solicit new projects with outreach and education efforts.

In Fiscal Year 2002, this Office also launched the Attorney General's Municipal Brownfields Grant Program to assist municipalities with brownfields revitalization and awarded approximately \$1.3 million to 29 communities across the Commonwealth.

#### **Brownfields Covenants Issued**

**Greenfield Tap and Die Plant, Greenfield** In December 2001, EPD, in collaboration with DEP, provided liability relief in the form of an Administrative Order on Consent between responsible parties at the site, the Town of Greenfield, and the Commonwealth to accommodate the complex needs of both public and private parties. The clean-up of the former Greenfield Tap

and Die Plant site, long vacant and blighted, will allow the 14-acre property to be redeveloped for commercial, light industrial, and/or housing. Liability relief offered by the Attorney General's Office enabled the Administrative Order on Consent to play an important role in the settlement of the complex issues that existed between TRW, Inc., Greenfield Industries, Inc., and the Town of Greenfield. The Attorney General awarded \$36,300 to the Town of Greenfield to assist this project.

**Manchester Street, Lowell** In February 2002, EPD executed a Brownfields Covenant for the construction of affordable housing on Manchester Street in Lowell. Michael Harkins and Headwall Recovery, together with the current owner, Muldoon Bros., will clean-up and redevelop the two-acre parcel, which was formerly used as an oil depot. The project involves clean-up and subdivision into at least six lots and the construction of single- and two-family residences on each lot. All the homes are expected to be marketed and sold for \$175,000 or less, and several of the lots will meet state and local standards for affordable housing.

**Roxbury/Urban Edge, Roxbury** In March 2002, EPD entered into a Brownfields Covenant with the UED Corporation, a subsidiary of Urban Edge Housing Corporation. Urban Edge intends to redevelop the Washington Street site by razing a 24,000-sq.-ft. building formerly used as an auto body repair shop, removing two abandoned 500-gallon underground gasoline storage tanks, and remediating contaminated soil associated with those tanks. Urban Edge intends to redevelop the vacant site for commercial and affordable housing uses.

#### Applications Under Consideration

**Champion City Recovery, LLC Project, Brockton** In October 2001, Champion City Recovery, LLC, submitted an application for a Brownfields Covenant. Champion City intends to clean up and construct a construction and demolition debris transfer facility at the site of the former Hercules site in Brockton. In early June 2002, DEP issued a permit to construct the facility.

**Stoklosa Middle School Project, Lowell** In March 2002, the City of Lowell and KeySpan Energy Delivery New England jointly submitted an application for a Brownfields Covenant. The City of Lowell intends to build a 600-student middle school on 6.5 acres of former industrial property, a portion of which KeySpan Energy currently owns. The Attorney General awarded \$76,000 to the City of Lowell to assist this project.

**Grove Willow, LLC, at the former Raytheon Facility, Waltham and Watertown** In September 2000, Grove Willow, LLC, submitted its final application for the redevelopment of the former Raytheon facility. Grove Willow intends to redevelop Raytheon's former 78-acre manufacturing plant into a state-of-the-art telecommunications park and create potentially 1,000 jobs. In Fiscal Year 2002, EPD continued to consider this application.

**Glover Estates, LLC, at the former Chadwick Lead Mills Site on the Salem/Marblehead border** In February 2001, Glover Estates, LLC, submitted a Brownfields Covenant application involving the clean-up of a former lead mill site and the construction of 55 units of senior assisted living, with a percentage devoted to low-to-moderate-income residents. The development would create between 50 and 60 new jobs. The application is currently under review. EPD conducted a Public Forum on the project in April 2001 and has since learned that the project has significant community opposition. In Fiscal Year 2002, EPD continued to monitor progress of this project.

**Iron Horse Park Superfund Site, Billerica** In December 2001, Iron Horse Park, LLC, Easton Exchange Holding, Inc., and Easton Exchange Services, LLC, submitted an application for a Brownfields Covenant for the redevelopment of a portion of the Iron Horse Park Superfund Site known as "Penn Culvert." The proposed reuse for the property is for a storage, handling, and distribution facility that will include one 81,200-square-foot warehouse building, a paved parking lot, and a railroad spur to revitalize the site, generate new jobs, improve the property value, and increase the tax base in Billerica.

### Applications Anticipated

**GenCorp./Lawrence Gateway Project, Lawrence** One of the Brownfields Unit's long-term priority efforts is the Gateway area of Lawrence. The redevelopment of the GenCorp site into parking and the abutting Oxford Paper site into a park and an open-space recreation area will be catalysts for revitalization of the Gateway area — inspiring new development and increased occupancy and use in existing mill buildings as well as expansion of Lawrence General Hospital services. This project would create hundreds of jobs and spur economic development of the Gateway area and much of the mill area, creating significant public benefits to Greater Lawrence.

In Fiscal Year 2002, EPD continued to participate in regular Gateway meetings convened to provide constant momentum to move the GenCorp and Oxford Paper projects forward. EPD also promoted and facilitated the formation of an entity to assume operation and management

responsibilities of a 2,000-space parking facility on the GenCorp site that could be used by abutting mill owners by 2004. EPD also advocated for near-term parking spaces on appropriate portions of the GenCorp site. GenCorp has submitted a draft application for consideration.

In addition, the Attorney General awarded a Brownfields Municipal Grant of \$125,000 to the City of Lawrence to assist with the Gateway project.

**Rail Yard, New Bedford** Another of the long-term priority brownfields efforts is the New Bedford Redevelopment Authority project involving the conversion of the 30-acre New Bedford rail yard into a multi-use inter-modal transit area. Throughout Fiscal Year 2002, EPD worked with City of New Bedford officials to provide assistance so that the project's liability issues would be addressed. The Attorney General awarded a Brownfields Municipal Grant of \$89,900 to the City of New Bedford to assist this project.

**BFI/Decor Project, Whitman** A current tenant with an existing business forms company is interested in completing the clean-up and expanding paper manufacturing operations, creating approximately 30 new jobs, but has liability concerns associated with these efforts. In Fiscal Year 2002, EPD continued its efforts on this project.

**Smith & LaMountain Service Corp. Project, Monson** In June 2002, Smith & LaMountain Service Corp. submitted a draft application for a Brownfields Covenant for a project in Monson. The applicant intends to clean up and redevelop a 5-acre site with a 10,000-square-foot building (former/abandoned auto repair/dealership) into company headquarters and create 35 new jobs.

**Olin Chemical Site, Wilmington** In Fiscal Year 2002, EPD met with DEP, Olin, and a prospective developer to discuss the liability issues relating to an appropriate clean-up and redevelopment of the site.

**Microfab Site, Amesbury** EPD has worked with the City of Amesbury to assist the redevelopment of an abandoned property that is the subject of a DEP lien. DEP, using a brownfields grant from EPA, recently completed the Phase II Comprehensive Assessment of the property, which provides valuable information for potential developers. EPD has also met with developers interested in applying for a Brownfields Covenant and made the Phase II Report available for review by potential developers. The Attorney General awarded a Brownfields Municipal Grant of \$40,000 to the City of Amesbury to assist this project.

### Other Projects

Throughout Fiscal Year 2002, EPD explored clean up and redevelopment opportunities with a variety of prospective developers. These redevelopment projects could lead to the creation of new jobs across the Commonwealth, involving significant tracts of land and commercial space, and the creation of affordable housing and open space.

In many instances, EPD has encouraged clean up and redevelopment projects to proceed by explaining to interested parties that the statutory relief should be sufficient liability protection and that a Brownfields Covenant would not be necessary.

### The Attorney General's Municipal Brownfields Grant Program

In Fiscal Year 2002, in order to encourage brownfields revitalization and liability protection for municipalities participating in the Brownfields Covenant Program, the Office developed the Municipal Brownfields Grant Program. The Grant program is designed to assist municipalities in returning underutilized properties to more productive and desirable uses. EPD sent grant application packages to each of the 351 municipalities in the Commonwealth. In addition, EPD also made the grant information available on the Attorney General's Web site, which it updated specifically for this purpose. EPD offered three types of appropriate uses for the grants:

- 1) **Comprehensive Redevelopment Planning** (for costs associated with redevelopment planning, including pre-construction, reuse analysis, site planning, and architectural design components of the overall redevelopment proposal, which will allow program participants to determine the scope and feasibility of a Brownfields project);
- 2) **Open Space Creation or Revitalization** (for costs associated with on-site investigation as to the nature and extent of environmental contamination on the property, as well as to provide assistance with open space enhancement); and
- 3) **Brownfields Covenant Application Assistance** (for costs associated with transactional costs, legal fees, mapping and/or Geographic Information System costs, and Licensed Site Professionals and technical assistance expenses related to the Municipal Brownfields Grant Program process).

The deadline for submission of the grant applications was March 13, 2002. EPD received 31 applications, seeking over \$2.1 million. After a rigorous review process, the Attorney General awarded

approximately \$1.3 million in grant funds to 27 municipalities in April 2002, representing more than 30 Brownfields projects.

Amesbury \$40,000 for redevelopment planning for the Lower Millyard area, including relocation analysis of the Department of Public Works facilities at the Microfab site.

Ashfield \$57,400 for open space revitalization of the Old School site.

Athol (through the Montachusett Regional Planning Commission) \$19,000 for redevelopment of the Island Street Lot.

Barnstable \$57,400 for open space revitalization of an abandoned gas station site.

Easthampton \$25,000 for comprehensive redevelopment plan for the Ferry Street Re-Use Project.

East Bridgewater \$20,000 to conduct a reuse feasibility study for the Eastern States Steel/Precise Engineering site and for Brownfields Covenant application assistance.

Everett (Mystic Valley Development Commission) \$116,035 for the Telecom City project for comprehensive redevelopment planning, housing planning, and open space revitalization. The Mystic Valley Development Commission will use these funds for design drawings for the Internet Drive and Norman Street for TeleCom City East, to undertake site planning cost analysis for Project 525, and to revise the Response Outcome Statement on the Everett/GE Park site so that it will allow recreational use. Finally, the Grant funds were also able to assist with the design costs for the bike-to-the-sea path.

Gardner \$69,733.15 for the Library Open Space Enhancement Project, redevelopment planning for Pond Brook Way, and Brownfields Covenant application assistance.

Greenfield \$36,300 for redevelopment planning and open space revitalization of the Greenfield Tap and Die Redevelopment Project located at Meridian Street.

Haverhill \$62,000 for comprehensive redevelopment planning and Brownfields Covenant application assistance for the 57 Granite Street Project.

Lawrence \$125,000 for open space enhancement of the Oxford Mill Site and the Lawrence Gateway area.

Lowell \$76,000 for comprehensive redevelopment planning, including open space enhancement, for the Kathryn P. Stoklosa Middle School project.

Lowell \$21,250 for comprehensive redevelopment planning associated with the Tanner Street Initiative.

Lynn (EDIC/Lynn) \$24,500 for analysis of reuse options for the Lynn GE site and for Brownfields Covenant application assistance.

Marlborough \$85,000 for two projects: Open Space Design for the Old Train Depot site and comprehensive redevelopment planning at the former Tannery site.

Maynard \$23,875 for open space enhancement related to the Bursaw Parcel project.

Montague \$13,640 for redevelopment planning for the former Sweeny Ford site.

New Bedford (New Bedford Redevelopment Authority) \$89,900 for development of a comprehensive redevelopment plan and for Brownfields Covenant application assistance for New Bedford's North Terminal Regional Inter-modal Transportation Center project.

North Brookfield \$5,000 for Brownfields Covenant application assistance relating to the former Aztec site.

Northampton \$50,000 for open space revitalization of the Historic Mill River Corridor.

Pittsfield \$55,000 for comprehensive redevelopment planning for the former GE Pittsfield site and Brownfields Covenant application assistance.

Plymouth (Plymouth Redevelopment Authority) \$12,925 for redevelopment planning for the Revere Copper project.

Somerville \$30,000 for redevelopment planning for the Kiley Property project.

Taunton \$25,000 for structural analysis of the F.B. Rogers Building.

Templeton (through the Montachusett Regional Planning Commission) \$18,000 for open space revitalization of the former Templeton - Hubbardston Railroad spur.

Templeton (through the Montachusett Regional Planning Commission) \$18,000 for open space creation of the Nugget parcel.

Walpole \$42,500 for a reuse analysis of 1901 Main Street.

Waltham \$33,000 for open space planning at the former Bernis Railroad Spur site.

Worcester \$67,500 for redevelopment planning for the Mason/Winfield Rehabilitation Project.

### Other Program Developments

In Fiscal Year 2002, the Brownfields Unit hired a Brownfields Coordinator and an Assistant Attorney General to assist in the operation of the program. The expansion allowed a greater level of outreach efforts to provide education and background on the Brownfields program generally. The Brownfields Unit also upgraded the technology capabilities with geographic information systems (GIS) so that it can develop extensive maps of Brownfields, digital imaging, and other upgrades, such as laptop, printer, and PowerPoint presentation materials, to assist in our outreach efforts.

### LEAD PAINT

Massachusetts has a high rate of lead poisoning among children due, at least in part, to exposure to lead-based paint in the state's older housing stock. Luckily, Massachusetts also has one of the nation's strongest lead-based paint notification and abatement laws. The Massachusetts lead law requires the deleading or interim control of lead hazards existing in homes built before 1978 where children under 6 are living. Owners are also required to notify tenants that a property has not been delead, regardless of whether a child under the age of 6 is living in the home.

During Fiscal Year 2002, Massachusetts continued a lead paint enforcement initiative in cooperation with the EPA and the U.S. Department of Housing and Urban Development (HUD). The initiative seeks to enforce the state law requiring disclosure of lead hazards and the abatement of lead paint with enforcement of the federal disclosure requirements. EPD's actions are part of a larger Public Protection Bureau initiative that will potentially include civil rights actions against landlords who seek to evade the lead law by refusing to rent to families with small children and enforcement actions against unlicensed lead abatement contractors.

## ENVIRONMENTAL HEALTH AND SAFETY IN THE SCHOOLS

Consistent with Attorney General Reilly's priority on safe schools, EPD participated in numerous initiatives to address environmental health and safety concerns in Massachusetts' public schools, especially indoor air quality. The Attorney General has been a consistent advocate of schools, adopting Environmental Management Systems to address their environmental compliance issues on an ongoing basis.

During Fiscal Year 2002, EPD continued to work with community groups and other state agencies to identify the common environmental health and safety issues in the schools, the challenges the schools face in addressing those issues, and the gaps in the laws and regulations on such issues. EPD is currently working with several members of the Healthy School Council to develop legislation to address environmental health and safety issues in the schools.

## PROTECTING CONSUMERS FROM EXPOSURE TO ASBESTOS, TOXICS, AND PESTICIDES

Massachusetts has a long-standing commitment to reducing human exposure to harmful substances, such as asbestos, toxics, and pesticides.

In Fiscal Year 2002, EPD continued its enforcement initiative against asbestos abatement contractors and owners/operators of facilities where improper removal of asbestos has resulted in the release of asbestos into the environment. In addition to several enforcement cases under investigation, EPD reached a settlement against General Air Conditioning & Heating, a small company based in Boston, regarding alleged violations of asbestos-related regulations at a state facility. The settlement required injunctive relief and payment of a \$30,000 penalty.

## THE CLEAN STATE INITIATIVE

A top priority of the Attorney General is compliance, by all state agencies and authorities, with the environmental laws and regulations of the Commonwealth. In addition to prosecuting individual cases against state entities, the Attorney General during Fiscal Year 2002 issued a comprehensive report to the Governor and the General Court reviewing the Clean State Initiative begun in 1994 with the issuance of Executive Order 350. The report concluded that the initiative has done a good job of seeing that a huge number of existing violations have eventually been identified and addressed, but has done a relatively

poor job of preventing new violations, as shown by a number of recent high-profile violations. The 2002 report called upon the Swift Administration to revitalize the Clean State Initiative by continuing the reporting obligations included within Executive Order 350, and it called upon the Governor to require all state agencies to institutionalize environmental compliance into their mission by adopting environmental management systems.

### LEGISLATIVE EFFORTS

Much of EPD's legislative work this year was in fighting efforts by the U.S. Department of Defense (DOD) to secure additional exemptions from federal environmental laws. In several letters that he sent opposing such efforts, the Attorney General pointed out that historically DOD has been one of the worst environmental violators and that the major federal environmental laws already provide DOD with sufficient flexibility to ensure that environmental compliance will not compromise military readiness.

### AMICUS BRIEFS

During Fiscal Year 2002, EPD submitted several *amicus curiae* briefs. The most significant *amicus* brief was submitted in *Taygeta v. Varian*, a case that was pending before the SJC. At issue was how the applicable statute of limitations should be applied to a property damage claim brought pursuant to G.L. c. 21E. The Superior Court had dismissed as untimely a claim brought by one owner of contaminated property against the owner of adjacent property that was the source of the contamination. The owner of the source property argued that once someone fears that his property is contaminated, he has a duty to investigate whether his property is in fact contaminated and must file any claims within three years. EPD argued that the innocent party had no independent duty to conduct the site investigation in order to preserve his property damage claim against the party who caused the contamination. The Court issued a ruling reversing the Superior Court's dismissal of the case, adopting the legal position set forth in EPD's brief. This is a significant victory for the victims of hazardous material contamination.

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## INSURANCE DIVISION

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The Insurance Division represents the public interest in administrative insurance rate-setting proceedings. The Commissioner of Insurance sets these rates, and the administrative proceedings are held at the Commissioner's Division of Insurance. The Insurance Division also brings actions in state court against insurers for unfair acts and practices, provides comments and testimony regarding proposed regulations

and laws relating to insurance, mediates claims on behalf of consumers, and provides assistance on insurance and other issues to members of the Massachusetts elder community.

Staff members of the Insurance Division included Joanna Connolly, Division Chief; Stacy Book; Matthew Buehler; Joyce Coughlin; Gerald D'Avolio; Judith dePontbriand; Barbara Fain; Maureen Forbes; Lydia Froese; Stacey Gotham; Maureen Hensley-Quinn; Hilary Hershman; Peter Leight; Pamela Meister; Susan Melucci; Thomas O'Brien; Mary Jane Preskenis; Katie Rhodes; and Rachel Weiner.

## SIGNIFICANT CASE SUMMARIES

### RATE CASES

- Automobile Insurance Rate Setting for the Year 2002 Cycle (Insurance Division) The Automobile Insurance Rate Setting proceeding is an annual administrative proceeding in which the Commissioner of Insurance, based on proposals and evidence submitted by the auto industry and other parties, sets automobile insurance rates for the coming year. The division represents the public interest in these proceedings and usually submits our own proposed rate filing. The case, if pursued to its conclusion, requires litigation in four separate dockets, each dealing with another portion of the overall rate computation. In Fiscal Year 2002, the industry sought a 7.8% increase in rates. Before the division was required to make any filings in the main portion of the case, the administrative docket settled. Rates were set by stipulation at the same level as the year before (0% increase). Compared to the rate requested initially by the industry, this settlement saved consumers over \$200 million.
- Residual Market Homeowners Insurance, Year 2002 Cycle (Insurance Division) Many homeowners in Massachusetts are unable to obtain homeowners insurance from private insurance carriers in the voluntary market, especially those homeowners whose dwellings are close to the shoreline and/or are located in urban areas. Under Massachusetts law, these homeowners can obtain insurance from a "residual" market, where major insurers are required to pool the risk and provide coverage. The Commissioner of Insurance sets rates for this residual coverage annually, after an administrative proceeding. In Fiscal Year 2002, the industry proposed a rate that the division accepted without further negotiation. The case thus settled by stipulation without administrative litigation.

- **Medicare Supplement Rate Proceedings** (Insurance Division) Each insurance company offering Medicare Supplement insurance must file its policy with the Commissioner of Insurance and get approval if it is seeking significant premium rate increases. In Fiscal Year 2002, the division opposed the increases sought by three insurers: World Insurance, Hartford Life Insurance, and Oxford Life Insurance. All three cases settled by stipulation without significant administrative litigation. Through the efforts of the division, the rate increases were significantly curtailed and consumers saved over \$1.7 million.

## AUTO INSURANCE

- **In re: InsWeb Co.** (Suffolk Superior Court) InsWeb, an online Internet service that provides auto insurance quotes to Massachusetts drivers, allegedly used filters on its Web site to screen out requests by bad drivers, in violation of Massachusetts law, which requires insurers to offer insurance to all drivers. Prior to any litigation, InsWeb agreed to an Assurance of Discontinuance and paid \$7,500 to the state. In addition, Amica Insurance and Commerce Insurance, two Massachusetts insurers who gave quotes to consumers via InsWeb, also agreed to refrain from illegal filtering in the future and paid \$7,500 each to the state.

## HEALTH CARE

- **Aetna/US Healthcare** (Suffolk Superior Court) Aetna/US Healthcare, a national health insurer doing business in the Commonwealth, allegedly failed to provide proper notice to consumers that their policies were being canceled. Prior to litigation, Aetna agreed to an Assurance of Discontinuance and to pay \$25,000 to the Local Consumer Aid Fund.
- **Polaroid** (Bankruptcy Court, District of Delaware) Polaroid, a Massachusetts corporation with offices in Woburn, filed for bankruptcy protection in October 2001 in Delaware. Due to the bankruptcy, employee benefits for retirees would no longer be available. The division intervened in the bankruptcy on behalf of employees and retirees. Through subsequent filings and appearances, the division secured continued Medigap coverage for the retired employees.

- Boston Regional Medical Center (Bankruptcy Court, District of Massachusetts) Boston Regional Medical Center (BRMC) is a hospital that filed for bankruptcy in 1999. BRMC diverted employee health insurance premium payments for other purposes, leaving its employees without healthcare coverage. The division intervened under Bankruptcy Rule 2018B and filed a proof of claim on behalf of affected employees. This case was litigated up to the eve of trial and then settled for \$83,000 in payments to consumers (this represents 60% of the medical bills incurred during the 60-day period after termination and 100% of the costs incurred by the employees who retained some other insurance coverage).
- Commonwealth v. Healthcare Value Management (Suffolk Superior Court) This case involved a fraudulent Ameri-Med health plan. Healthcare Value Management (HCVM) negligently assisted a fraudulent health plan scheme by agreeing to provide its provider network to the chimeric health plan (Ameri-Med) without performing any background checks. HCVM agreed in a Consent Judgment to perform such background checks in the future and made payments to consumers totaling \$98,000.

## LIFE INSURANCE

- Allied Waste/BFI Allied Waste (formerly known as BFI), a national trash disposal company with offices in Massachusetts, allegedly negligently filed an erroneous list of insured employees with its life insurance company, resulting in unlisted employees losing insurance coverage. Prior to filing a suit, Allied agreed to provide the full death benefit of \$25,000 to the widow of the one employee who died during the period of non-coverage.
- Boston Mutual Life Ins. Co. Boston Mutual Life Insurance Company, a life insurer in the Commonwealth, allegedly used unlawful sales practices (also known as "churning") and misled consumers regarding the projected return on their life insurance investments. Boston Mutual voluntarily provided restitution totaling \$14,000 to the two harmed consumers and provided them with replacement life insurance policies. There was no litigation, and no settlement or assurance was filed in court.
- Mass Mutual Life Ins. Co. Mass Mutual Life Insurance Company, a life insurer in the Commonwealth, allegedly churned policies and misled consumers regarding the projected return on their life insurance investments. Mass Mutual voluntarily provided the one consumer who was harmed with a replacement life insurance policy that conformed to the company's representations. There was no litigation, and no settlement or assurance was filed in court.

- Sun Life Sun Life Insurance Company, a life insurer in the Commonwealth, allegedly churned policies and misled consumers regarding the projected return on their life insurance investments. The division raised the issue with Sun Life, and the company voluntarily corrected the accounts of the seven consumers involved. The adjustments were worth \$73,000 to the consumers. There was no litigation, and no settlement or assurance was filed in court.

## OTHER OFFICE LITIGATION

- Messing, et al. v. Harvard College (Supreme Judicial Court) This was an appeal in a private lawsuit from a Superior Court decision sanctioning a law firm for interviewing current employees of the defendant without notifying defendant's counsel. Defendant argued that this conduct violated Rule 4.2 of the Massachusetts Rules of Professional Conduct. The decision and the sanction, which was in excess of \$94,000, had attracted considerable attention in the Massachusetts legal community. Through the combined efforts of the Charities Division, the Criminal Bureau, and the Insurance Division, the office filed an *amicus* brief. On appeal, the Supreme Judicial Court vacated the Superior Court sanctions order and held that the plaintiff law firm had not violated the disciplinary rules. The Supreme Judicial Court also proposed a new test for evaluating the propriety of ex parte contacts with employees of a represented organization. Later in the year, the Supreme Judicial Court revised the Comments to Rule 4.2 to follow the new standard set forth in its opinion.

## PARTICIPATION IN REGULATORY HEARINGS

- Department of Public Health Regulations (Department of Public Health) The Department of Public Health proposed revisions to its Health Insurance Consumer Protection regulations, 105 Code of Massachusetts Regulations (CMR) 128.00. These regulations include requirements for insurance carriers in administering their internal grievance procedures, requirements for the conduct of external reviews of carriers' adverse determinations, and requirements for continuity of care and referral to specialty care. The Attorney General's Insurance Division testified at the public hearing and provided generally supportive testimony regarding the changes, but also noted that some additional changes and clarifications would be desirable.
- Insurance Division Regulations (Insurance Division) The Insurance Division sought to amend a variety of regulatory provisions during Fiscal Year 2002, including regulations on Managed

Care Consumer Protection Provisions, Accreditation of Carriers, HMO Plan Design issues, and limits on Specified Disease Coverage. The Attorney General's Insurance Division provided testimony on these proposed amendments, including suggestions for technical corrections, to the Commissioner of Insurance.

## SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

### INSURANCE HOTLINE AND MEDIATION PROGRAM

In Fiscal Year 2002, 7,404 people, an average of 617 a month, called the division to ask questions and seek help with insurance problems. More than 40% of the callers were concerned about health insurance issues. Many of the callers had been recently laid off from their jobs and needed information about their health insurance rights; others were concerned about the cost of prescriptions, claim denials, and medical bills. Approximately 20% of the callers sought help with auto insurance problems. Most were having difficulty with accident claims, while others raised questions about premium billing, cancellations, and surcharges.

The Insurance Division received a large volume of calls in October 2002, when Polaroid Corporation filed for protection under Chapter 11 of the Bankruptcy Code. More than 1,000 people called the division in October, the majority of whom were Polaroid retirees and employees concerned about their health, life, and disability insurance benefits. Mediation staff provided information and reassurance to callers and assisted in the preparation of advisories for Polaroid employees and retirees and their families.

In addition to the consistently high volume of calls related to health and auto insurance, the Insurance Division also received inquiries related to a broad range of other issues, including short- and long-term disability insurance, life insurance and annuities, travel insurance, credit insurance, and possible insurance scams. Callers asked questions about how to evaluate insurance before purchasing a policy, how to cancel unwanted insurance, how to appeal a denied claim, and how to deal with incorrect billing.

The Insurance Division's mediators answered the questions of callers, providing information and referrals and, when appropriate, mailing consumer complaint forms.

In Fiscal Year 2002, the Insurance Division opened 1,293 consumer complaint files, the majority of which were submitted on consumer complaint forms or as letters to the division. As with the telephone

inquiries, a significant number of the written complaints related to health insurance — 497 of the new complaints, 38% of the total, involved health insurance. The most prevalent complaints concerned claim denials.

In Fiscal Year 2002, 21 undergraduate interns from 14 colleges and universities received training to mediate consumer insurance complaints. More than half of the interns received academic credit for their work. During the summer and academic year, interns volunteered nearly 4,000 hours in the mediation program.

In Fiscal Year 2002, Insurance Division mediators closed 1,343 consumer complaint files and recovered \$1,726,271.90 for Massachusetts consumers.

INSURANCE DIVISION MEDIATION PROGRAM OUTCOMES

	CALLS TO HOTLINE	NEW COMPLAINT	TOP ISSUES	FILES CLOSED	FUNDS RECOVERED FOR CONSUMERS
July 2001	550	126	Health: 49 Auto: 27	117	\$98,571.23
August 2001	639	105	Health: 44 Auto: 18	90	\$124,965.84
September 2001	418	88	Health: 27 Auto: 23	74	\$205,105.28
October 2001	1,025	149	Health: 63 Auto: 29	105	\$109,469.59
November 2001	608	102	Health: 41 Auto: 14	130	\$128,323.35
December 2001	504	70	Health: 28 Auto: 11	145	\$208,235.40
January 2002	723	137	Health: 51 Auto: 36	85	\$122,813.85
February 2002	667	123	Health: 47 Auto: 20	158	\$115,431.24
March 2002	630	111	Health: 38 Auto: 28	101	\$215,223.65
April 2002	505	106	Health: 44 Auto: 16	119	\$175,829.58
May 2002	627	106	Health: 49 Auto: 19	77	\$106,493.92
June 2002	508	70	Health: 36 Auto: 10	142	\$115,829.22
<b>TOTAL</b>	<b>7404</b>	<b>1293</b>		<b>1343</b>	<b>\$1,726,291.90</b>

## AG ELDER

The Attorney General's Elder Hotline was established six years ago, in June 1997. Since its inception, the hotline has grown steadily in the number of calls that it handles, the scope of services it provides, and the number of volunteers who staff the line and mediate complaints. In the past fiscal year, while the number of calls received remained essentially constant (7,583), the complaints/queries opened grew by 14.6% from 2,594 to 2,974, and the money returned to consumers through mediation nearly doubled from \$88,421.68 to \$169,768.22.

The top three categories of complaints remained constant between Fiscal Years 2001 and 2002. The number one complaint was against businesses, including auto dealerships, retail stores, and banks (521 complaints). The number two category comprised complaints related to telemarketing, sweepstakes, lotteries, and mail solicitations and fraud (313 complaints). The third area of complaint related to health insurance issues, including prescription drug coverage (310 complaints).

Problems regarding credit card and other types of debt moved from the sixth most common category of complaint during the last fiscal year to the fourth most common this year, with 194 complaints registered. Following that were complaints regarding utilities, chiefly telephone services, with 186 complaints logged in. There were 170 complaints of financial exploitation, 163 complaints against home improvement contractors, 132 complaints against healthcare businesses or healthcare workers, and 98 housing-related complaints, primarily involving senior housing complexes and, secondarily, assisted-living facilities.

## COMMUNITY BENEFITS GUIDELINES FOR HOSPITALS AND HMOS

Community Benefits include programs, grants, and other initiatives developed by hospitals and HMOs as part of a formal plan to address health and social needs in their communities consistent with the principles of *The Attorney General's Community Benefits Guidelines for Nonprofit Acute-Care Hospitals* and *The Attorney General's Community Benefits Guidelines for Health Maintenance Organizations*.

The Community Benefits Guidelines represent a unique non-regulatory approach under which Massachusetts hospitals and HMOs have voluntarily committed themselves to continuing and building upon their efforts to identify and respond to the unmet needs of the communities they serve. The guidelines call upon hospitals and HMOs to formalize their approaches to Community Benefits planning,

to collaborate with community representatives to assess community needs and create programs to address those needs, and to publish annual reports on their progress.

Members of the Consumer Protection and Antitrust Division and the Public Charities Division oversee reporting under the hospital guidelines. A member of the Insurance Division oversees both reporting under the HMO Guidelines and the Attorney General's Community Benefits Advisory Task Force, convened for the purpose of advancing the goals of the guidelines.

The Advisory Task Force includes representatives of hospitals, HMOs, community health advocacy groups, and relevant state agencies. It is organized into several working groups that focus on the key elements of Community Benefits, including reporting and community engagement.

During Fiscal Year 2002, Community Benefits staff worked to update and revise the original Community Benefits Guidelines, drafting changes and meeting with the Massachusetts Hospital Association, the Massachusetts Association of Health Plans, and consumer health advocates to discuss the proposed revisions. The full Advisory Task Force reviewed the changes, and revised guidelines were issued in the second half of Fiscal Year 2002.

Community Benefits staff also finalized and implemented a new process and format for Community Benefits annual reports. This included completing an informal public comment process, conducting several training sessions for hospital and HMO Community Benefits managers, and providing guidance to hospitals and HMOs in their preparation of their Fiscal Year 2001 annual Community Benefits reports.

The Office sought and received approval from the Kellogg Foundation to re-allocate the balance of an expired grant to the Public Charities Division toward the design and development of a Community Benefits Web-enabled database and electronic filing system for annual reports. This project involved selecting and contracting with a Web applications contractor and working closely with that contractor to develop the applications. The Advisory Task Force working group on reporting issues served as a "user group" throughout the design and testing of the database and electronic filing system. The first phase of the Community Benefits Web site was launched toward the end of Fiscal Year 2002, and the remaining work is scheduled for completion in the first half of Fiscal Year 2003.

Finally, another Advisory Task Force working group designed and planned a series of regional Community Benefits public forums around Massachusetts. These forums are scheduled to take place during Fiscal Year 2003.

## OUTREACH, EDUCATION, AND TRAINING

### **EMPLOYEE TRAINING**

The Insurance Division staff coordinated two officewide trainings for non-lawyers on how to avoid the unauthorized practice of law and how best to handle stressful consumer telephone calls.

The Elder Hotline offers mandatory monthly trainings to its volunteers and staff on various topics. In Fiscal Year 2002, these included: Chapter 93A; Hospice Care; Public Records Request; Helping Consumers Facing Financial Crisis; Handling Common Complaints; Avoiding the Unauthorized Practice of Law; ABCs of Call Taking; Telemarketing and Lottery Scams; Home Improvement Contracting; Overview of the Criminal Bureau; Overview of the Medicaid Fraud Control Unit; Overview of the Civil Rights Division and the Disability Rights Project.

### **ELDER ISSUES**

The division coordinated three conferences on elder fraud abuse. The conferences, held in Dorchester, Salem, and Springfield, were collaborative efforts involving the Attorney General's Public Protection, Criminal, and Fair Labor Bureaus and the Attorney General's Western Massachusetts Office; district attorneys offices; state protective services offices; and local police departments. Conference panelists discussed telemarketing, identity and home improvement fraud, local scams, and how to recognize and report abuse in nursing homes and in the community. More than 450 elders, elder providers, and law enforcement professionals attended these free, half-day events.

The division trained municipal police cadets on elder fraud and abuse.

The division conducted extensive outreach to elders and elder providers during Fiscal Year 2002 on unfair debt collection, telemarketing, home improvement fraud, charity fraud, and identity theft.

The division also assigned representatives to serve on various elder advisory boards.

AG Elder staff provided information about the office and about consumer fraud and protection at 13 different events around the Commonwealth. These were mostly speaking engagements at different sites where seniors live or gather, including senior centers, senior housing complexes, and community groups. In addition, AG Elder gave presentations at two hospitals and two legal clinics.

In November 2001, the division delivered a seminar to the Department of Labor's Pension Welfare Administration staff on the topic of the interplay between state law and federal law in cases that pertain to employee benefits. The seminar addressed the scope of state insurance law and how the Attorney General is able to aid employees in maintaining or securing employee benefits in circumstances where there are violations either by employers, insurance companies, or third-party administrators.

### **STATISTICAL SUMMARY**

Investigations initiated	11
Litigation initiated in Superior Court	1
Judgments obtained in Superior Court	1
Bankruptcy interventions	2
Assurances of Discontinuance	2
Money saved for consumers in administrative rate proceedings	\$202 million
Restitution obtained for consumers in civil cases	\$293,000
Payments to the Commonwealth	\$47,500
Money recovered in Insurance Mediation Program	\$1,726,292
Money recovered by AG Elder Mediation	\$169,769

### **INVESTIGATIONS DIVISION**

The Investigations Division conducts investigations primarily for divisions within the Public Protection and Government Bureaus. In addition, the division also investigates cases or matters on occasion for the Executive Bureau, or in conjunction with the Criminal Bureau.

Division investigators locate and interview victims, witnesses, subjects, and others; obtain and review documentary evidence from numerous sources, including individuals, corporations, and federal, state,

county, and municipal agencies; conduct surveillance, background checks, and asset checks; analyze financial records and perform other forensic accounting functions; and testify before grand juries and at trial. In some cases, investigators worked closely with other state attorneys general, district attorneys, local and state police departments, the U.S. Attorney's Office, the U.S. Postal Inspection Service, the Federal Bureau of Investigation, and the Federal Trade Commission.

The Investigation Division included Karen Ortolino, Director; Quinton Dale, Deputy Director; Kerri Burridge; Monique Cascarano; Amy Cederholm; Mayra Connolly; Todd Davis; Ashley Dizel; Todd Dumas; Eric Funk; Jim Gentile; Karen Leary; Matthew McMahon; Lou Russo; Janice Spillane; Dawn Valchuis; and Nancy Ward.

In Fiscal Year 2002, the division initiated 333 investigations in the following major areas:

## SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

### PUBLIC PROTECTION BUREAU

**Consumer Protection and Antitrust** Investigators continued to assist the office in bringing G.L. c. 93A enforcement actions against businesses and individuals in major consumer areas. The division initiated several investigations and surveys to determine compliance with existing consumer laws and regulations, including multi-state and nationwide investigations into fraudulent sweepstakes promotions and telemarketing scams. The division also participated in Internet scams, the gun enforcement initiative, and healthcare.

Investigators worked with the Criminal Bureau's Consumer Protection Prosecutor on numerous cases that resulted in indictments and convictions against individuals for violations of the Commonwealth's criminal laws. Cases included larceny against the elderly and vulnerable populations by home improvement contractors and a travel agent; unlicensed practice of medical professions; telemarketing fraud; and illegal charitable fundraisers.

**Civil Rights and Civil Liberties** The division investigated hate crimes, allegations of police misconduct, and other violations of the Massachusetts Civil Rights Act. Investigations were also conducted into allegations of discriminatory housing and employment practices, as well as investigations to determine compliance with the rules and regulations established by the Americans

with Disabilities Act and the Architectural Access Board. The division also participated in a retail sting involving allegations of racial profiling.

**Environmental Protection** The division's role in EPD cases primarily involved locating and identifying assets of potentially responsible parties liable for paying costs incurred by the Commonwealth in the clean-up of polluted or hazardous waste sites. Investigators also located former employees and officers of defunct companies responsible in part for such violations, and reviewed, evaluated, and analyzed financial documents and prepared ability to pay analyses.

**Public Charities** The division investigated individuals associated with organizations that raised funds from the public in violation of Massachusetts law. In some instances, solicitors posed as law enforcement or other public officials or otherwise misrepresented themselves or the charity's purpose. Investigators worked with other law enforcement personnel in locating couriers who picked up donations.

**Insurance** Investigators worked with attorneys in the Insurance Division to review and investigate businesses and organizations that withheld employee contributions for health insurance premiums but failed to actually purchase the health insurance coverage. Other cases investigated included churning and the sale of fraudulent or costly life and health insurance policies.

## GOVERNMENT BUREAU

**Trial Division** The division played a major role in tort actions filed against the Commonwealth by investigating allegations of abuse, mistreatment, and deaths of individuals in state care; alleged wrongful termination of state employees; and personal injuries and other damages that occurred on state-owned property and/or in accidents on state roads or involving state vehicles. The division also investigated cases involving contract disputes and eminent domain proceedings and allegations of overcharging by schools subject to Department of Education and Office of Child Care Services (OCCS) regulations.

## COMMUNITY-BASED JUSTICE BUREAU

**Safe Neighborhood Initiative (SNI)** The division assisted the Attorney General's Abandoned Properties Project by conducting research on target properties in several communities, primarily to determine the status of ownership and existence of encumbrances of the buildings, and, in

some instances, assisted in inspecting properties scheduled for renovation. During the fiscal year, the division researched properties in Taunton, New Bedford, Worcester, and Brockton.

### **STATISTICAL SUMMARY**

The division opened 333 investigations in Fiscal Year 2002, with 345 investigations ongoing as of June 30, 2002.

<b>DIVISION/BUREAU</b>	<b>OPENED DURING FISCAL YEAR 2002</b>	<b>ONGOING AS OF 6/30/02</b>
Consumer Protection/Antitrust	37	72
Civil Rights	35	43
Public Charities	5	6
Insurance	4	7
Utilities	0	0
Consumer Protection Prosecutor	7	10
Government	2	5
Environmental Protection	10	19
Trial	233	183
<b>TOTAL</b>	<b>333</b>	<b>345</b>

### **DIVISION OF PUBLIC CHARITIES**

The Attorney General represents the public interest in the proper solicitation and use of charitable funds and is authorized to "enforce the due application of funds given or appropriated to public charities within the commonwealth and prevent breaches of trust in the administration thereof." G.L. c. 12, § 8. The Division of Public Charities was established to carry out the Attorney General's responsibilities in this area.

More than 30,000 charities are registered with the division in addition to over 300 professional fundraisers presently soliciting donations on behalf of charities in Massachusetts. A public charity is an entity that is non-profit, whose purpose is charitable, and that benefits a portion of the public; in addition to philanthropic organizations, examples of public charities include non-profit hospitals, schools, social service providers, and cultural organizations. As well as registering and obtaining financial reporting by charities and fundraisers, the Attorney General is the defendant in all proceedings brought to wind up the affairs of a public charity or to change the terms of a charitable trust.

The single most visible case involving the division in Fiscal Year 2002 was the investigation of the sale of the Boston Red Sox. In that investigation and the subsequent agreement to resolve the dispute, the Office and division stepped in to ensure that the interests of a charity, The Yawkey Foundation II, were fully protected.

Health care also continued to be an area in which the division performed considerable work. Consistent with the Office's strong interest in resolving problems related to the delivery of health care, the division has reviewed and monitored the actions of a number of the significant non-profit healthcare institutions that are public charities in Massachusetts, including both hospitals and insurers. The division engages in these corporate governance and oversight initiatives to ensure that the governing boards of these institutions have carried out their fiduciary duties of due care and loyalty.

The division also spent considerable effort following the attacks of September 11, 2001, responding to an outpouring of requests and inquiries that came in from the public, charities, and fundraisers. In the wake of the attacks, members of the division fielded hundreds of queries in many different forms pertaining to how individuals and organizations could fundraise to assist victims of the attacks. In addition, in one case, the division sued a married couple allegedly engaged in fraudulent fundraising, asserting they were fundraising for victims of September 11th but in fact were keeping the proceeds.

More generally, during Fiscal Year 2002 the division continued its activities in two other primary areas: enforcement litigation to address deception and fraud in charitable fundraising and estate and trust actions to ensure that charitable trust funds were appropriately administered and applied.

The division also recognizes that charities provide vital services in our communities while both enjoying certain benefits due to their tax-exempt status and assuming certain obligations. As a result, the division was involved in a number of initiatives in Fiscal Year 2002 intended to strengthen the charitable sector. These efforts included presentations to various public groups and bar organizations on charities issues, issuing the division's annual report on charitable fundraising, and working with the Boston Bar Association on legislation that would revise the non-profit corporation statute.

The Division of Public Charities staff included: Jamie Katz, Division Chief; Marion Antonucci; Caitlin Calder; Sandra Cardone; Eric Carricker; Patricia Clifton; Kevin Fennessey; Daniel Ferullo; Ann Giroux; Ann Higgins; Cathy Hoffman; Laura Maslow-Armand; Beth McGillicuddy; Kathleen O'Connell; Richard Reuss; Deirdre Rosenberg; Johanna Soris; and Tina Williams.

## SIGNIFICANT CASE SUMMARIES

### CHARITY GOVERNANCE

The Attorney General's oversight of charitable corporations focuses on stewardship by charity boards of directors. The division may become involved when directors breach their individual fiduciary duties of due care and loyalty or to prevent the misuse of charitable funds. In some cases, the division has engaged in investigations and then negotiated governance agreements that provided for reforms in how charities will operate. In other cases, the division brought enforcement actions in court after investigations. This fiscal year, the most significant matters included:

- **Sale of the Red Sox** The division, working with others in the Office, reviewed the sale of the majority interest in the Red Sox by trustees of the Jean Yawkey Trust. Because the terms of the Jean Yawkey Trust directed the transfer of the assets of the Trust to go to The Yawkey Foundation II, the division had authority to see to the "due application" of charitable assets. After meeting with representatives of the Jean Yawkey Trust and the Red Sox, prospective bidders, limited partners in the Red Sox, and Major League Baseball, the Office determined that the sale, as the Red Sox proposed it, raised serious conflict of interest and fair market value issues. As a result, the Office entered into discussions with various parties involved in the sale. Ultimately, the Office agreed to a settlement providing \$30 million more for The Yawkey Foundation II and a new foundation to be set up by the group of purchasers led by John Henry. The settlement also included an extensive governance agreement with The Yawkey Foundation II.
- **Chinese Consolidated Benevolent Association** The division continued its oversight of the operations of CCBA, a large Chinatown charity, focusing on improving its financial stability and accountability and ensuring that the organization is run properly in accordance with its by-laws. The division has a lawsuit pending against the charity and has worked with an interim CEO, who has directed the organization in accordance with a court order obtained by the division.

## FOR-PROFIT ACQUISITIONS

The Public Charities Division continued to devote considerable time and resources to reviewing proposed for-profit acquisitions of healthcare providers and other charitable corporations. Massachusetts charitable organizations may not, on their own, "convert" to for-profit status. If charitable assets are to be transferred to a for-profit, it must be for fair value, the transaction must be necessary and in the best interest of the charity, and the charity board must have acted carefully and in a manner uninfluenced by conflict of interest.

During the year, the division spent considerable time reviewing a proposal by the Delta Dental insurer to establish a for-profit subsidiary. Ultimately, after extensive negotiations and agreement by Delta Dental on a variety of conditions for the transaction, the division agreed to allow the creation of the subsidiary.

## REVIEW OF ASSET DISPOSITIONS

Under amendments to the Non-Profit Corporations Act, which took effect in April 1990, a charitable corporation must give 30 days advance written notice to the Attorney General before making a sale or other disposition of all or substantially all of the charity's assets if the disposition involves or will result in a material change in the nature of the activities conducted by the corporation. G.L. c. 180, § 8A(c). On a regular basis and in substantial volume, the division reviews correspondence and documents about transactions involving charities.

Among the most significant transactions involving proposed disposition of substantial charitable assets were:

- Bradford College The College closed following the conclusion of the spring semester in 2000. The division discussed and resolved a variety of issues concerning the College's handling of restricted funds. In addition, the division met with College representatives and others to deal with ongoing issues related to the disposition of the College's assets in the face of substantial debts owed by the College. In particular, the sale of the College's real estate became very contentious in Fiscal Year 2002. The City of Haverhill and its residents had many concerns about potential bidders for the property, and the division spent a considerable amount of time dealing with the real estate sale until it was resolved, shortly after the close of Fiscal Year 2002.

## CHARITABLE CORPORATION DISSOLUTION STATISTICS

In order to cease corporate existence, charitable corporations must dissolve through a proceeding in the Supreme Judicial Court. To enforce the public's interest in the disposition of charitable assets, the Attorney General is a party to all voluntary dissolutions of charitable corporations under G.L. c. 180, §11A. After review, negotiation of necessary modifications, and assent by the division, the pleadings are filed by the dissolving charity in the Supreme Judicial Court. The division reviewed many transactions involving proposed dissolutions.

## SOLICITATION OF CHARITABLE FUNDS

The Attorney General takes affirmative legal action against charities and professional fundraisers for unfair or deceptive solicitation practices and to enforce their fiduciary duties with respect to funds raised. In addition to injunctive relief, the Attorney General may seek restitution of funds intended by the public to benefit a specific charity, or particular charitable purpose, along with penalties and fees.

- Response to September 11th The division received hundreds of calls from members of the public, charities, fundraisers, and the press concerning the legitimacy of charities or charitable solicitations, as well as how to fundraise for the World Trade Center (WTC) victims. The division sent out enormous amounts of material and information to individuals on fundraising issues. The division produced and then revised an advisory on charitable solicitation in the wake of the tragedy, and communicated regularly with the Red Cross and other charities to coordinate our response and to exchange information about specific solicitations. The division worked with other government agencies in connection with charities scams and questions raised about charities that might be linked to al Qaeda.
- New England Kids Network (Norfolk Superior Court) The division filed a complaint alleging that owners of a commercial car donation company deceived the public through advertising that contained material omissions and misrepresentations. The division obtained a Consent Judgment and a \$5,000 penalty against the owner, Jeffrey Pollack, and an Assurance of Discontinuance with a \$5,000 penalty against Lisa Pollack, his wife.
- Commonwealth v. Jeffrey R. Scott and Dawn A. Scott (Hampshire Superior Court) This action alleged that the Scotts engaged in deceptive, unauthorized, and unregistered solicitation under the banner of September 11th disaster relief. The Scotts solicited funds and sold flag

decals, purportedly for September 11th charities, but never turned over the funds to charities and commingled the charities' funds with their own. Working with members of the Western Massachusetts Office, the division obtained a preliminary injunction against further fundraising by the Scotts.

## ESTATES AND TRUSTS

In furtherance of his authority to "enforce the due application" of charitable trust funds and to "prevent breaches of trust in the administration thereof," the Attorney General is an interested party in the probate of all estates in which there is a charitable interest and in all other judicial proceedings affecting charitable trusts.

Accordingly, the division continued to handle a large volume of cases in this area involving such matters as proposed allowance of accounts, will compromises, sale of real estate, change of purposes or beneficiaries of charitable trusts and bequests, amendment of charitable trusts to meet IRS requirements, and termination of charitable trusts under G.L. c. 203, § 25.

## WILLS, TRUSTS, AND OTHER PROBATE STATISTICS

During Fiscal Year 2002, the division received and reviewed 845 new wills, and received and reviewed 690 interim accounts for executors and trustees, as well as 594 final accounts. In addition, the division received, reviewed, and assented to 38 petitions for license to sell real estate and received and reviewed 823 miscellaneous complaints and filings.

During the reporting year, the division assented to 88 final judgments dissolving charitable corporations pursuant to section 11A.

## HEALTHCARE INITIATIVES

The division was involved in a variety of efforts to analyze and stabilize the healthcare sector.

**CareGroup** The division continued to spend considerable time and effort in investigating and monitoring the financial and operating condition of CareGroup and its affiliates (Beth Israel Deaconess Medical Center, Mt. Auburn Hospital, New England Baptist Hospital, Deaconess Nashoba Hospital, and Deaconess Waltham Hospital). Division staff reviewed a large volume of documents, meeting with representatives of the system and the affiliates, and worked with experts hired by the Office to assess, on a regular basis, whether the board and officers of the healthcare system were turning around the hospital's operation.

In particular, the division also ran a review under G.L. c. 180, § 8A(c) of CareGroup's transfer of Deaconess Waltham Hospital to a community board while the real estate went to a Waltham for-profit real estate developer. That review, including a public hearing, concluded that the transfer could proceed, though the newly reconstituted hospital faced significant challenges.

**G.L. c. 180, § 8A(d) reviews** Another area that required extensive efforts by the division was in the review of healthcare transactions. Under the recently enacted G.L. c. 180, § 8A(d), the Legislature required the Office to review an expanded range of healthcare transactions between non-profit hospitals and HMOs and other for-profit institutions. The division reviewed certain transactions under this statute in Fiscal Year 2002 and also established written guidelines to provide charities and the public with information on how the statute will be implemented.

**Harvard Pilgrim Health Care** During Fiscal Year 2002, division personnel dealt with issues arising out of the Harvard Pilgrim Health Care receivership. The division worked with Harvard Pilgrim over a variety of issues, including governance and engaging an independent healthcare analyst.

## SIGNIFICANT INITIATIVES, ACTIVITIES, AND EFFORTS

**Technology and Public Access** The division, working with others in the Office, enhanced the Charities Web page, enhancing the information we provide to charities and the public. All of the brochures and materials that the division provides appear on the Web site.

In another step both toward giving the public more access to division public records and toward electronic registration with the division by charities, the division began a document imaging program. The program involves the scanning of documents filed with the division so that division personnel can review them on a computer. Once the system is up and running, the division will provide the public with access to the scanned documents.

**Public Education** The division continued its ongoing public education efforts regarding charitable giving and charity stewardship. In addition to continuing distribution of a wide variety of public education materials, the Chief of the division and other Assistant Attorneys General in the division spoke to numerous charitable groups, served on several continuing professional education panels and national educational conference panels, and contributed to educational publications.

## **ADMINISTRATION AND STATISTICS**

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Enforcement of laws requiring accountability by public charities is central to division responsibilities with respect to charitable funds. With the exception of religious organizations and certain federally chartered organizations, all public charities must register with the division and all registered charities must submit annual financial reports. The registrations and financial reports are public records, and public viewing files are maintained. The division responded to over 1,086 requests to view files in the past fiscal year, and, in response, approximately 3,012 files were pulled.

### **CHARITABLE ORGANIZATIONS: REGISTRATION AND ENFORCEMENT**

From July 1, 2001 through June 30, 2002, the division processed approximately 16,385 annual financial reports and annual filing fees totaling \$1,669,702. During this period, 590 new organizations were reviewed, determined to be charitable, and registered. Each was sent the division's packet of information about the registration and filing requirements.

As part of an ongoing compliance program, division staff contacted charities whose annual filings were deficient or delinquent to rectify filing deficiencies.

## ISSUANCE OF CERTIFICATES TO CHARITIES THAT FUNDRAISE

Under G.L. c. 68, § 19, every charitable organization that intends to solicit funds from the public, except religious organizations, must apply to the division for a solicitation certificate before engaging in fundraising. Upon receipt, the division reviews certificate applications for compliance with statutory requirements. Unless there is a deficiency in the application, all certificates are issued within a 10-day statutory period.

## REGISTRATION OF PROFESSIONAL SOLICITORS AND FUNDRAISING COUNSEL

Under G.L. c. 68, §§ 22 and 24, all persons acting as professional solicitors, professional fundraising counsel, or commercial co-venturers in conjunction with soliciting charitable organizations must register annually with the division. Solicitors and commercial co-venturers must also file a surety bond in the amount of \$10,000. All fundraisers must also file with the division a copy of each fundraising contract that they sign with any charitable organization, and solicitors must later file a financial return regarding each fundraising campaign.

During Fiscal Year 2002, the division received and approved a total of 314 registrations, resulting in \$62,850 in fees to the Commonwealth. Registrations were received from 89 solicitors, 166 fundraising counsel, and 59 commercial co-venturers

## MONEY RECOVERED FOR THE COMMONWEALTH

Charitable and Fundraiser Registration Fees	\$1,732,552
Other fees, requests for copies, requests for computer information	\$1,493
<b>TOTAL</b>	<b>\$1,734,045</b>

## UTILITIES DIVISION

The Utilities Division represents utility consumer interests and is authorized to intervene in administrative or judicial proceedings on behalf of consumers in connection with any matter involving the rates, charges, prices, or tariffs of an electric, gas, telephone, or telegraph company doing business in the Commonwealth and subject to the jurisdiction of the Department of Telecommunications and Energy (Department or DTE) G.L. c. 12, § 11E. The division's work is carried on before state and federal courts as well as administrative regulatory bodies such as the Department, the Federal Energy Regulatory Commission (FERC), and the Federal Communications Commission (FCC). In many of these matters, particularly public utility rate cases, the division is the only active participant advocating on behalf of Massachusetts consumers.

The bulk of the workload of the Utilities Division in Fiscal Year 2002 involved advocacy of consumer interests in connection with the implementation of the dramatic changes under-way in the telephone, electric, and gas utility industries. The implementation of the 1997 Electric Restructuring Act (St. 1997, c. 164) continued with proceedings on the annual transition cost reconciliation filings, the provision of default service, and generating unit sales. Work continued among interested parties to enhance competitive electric markets, and further progress was made on expanding the range of activities in which local and wholesale competition could occur in the telecommunications industry. The division was an active participant in each of these developments. Not only did the division continue its traditional role of protecting customers from natural gas company distribution rate increases, but, for the first time in decades, it filed a petition with the Department, pursuant to the Attorney General's authority under G.L. c. 164, § 93, which resulted in lower rates for electric consumers in the Fitchburg area. The division continues to protect the interests of residential and business customers during the transition to new regulatory frameworks. Most of this work occurred in case-specific adjudications.

During Fiscal Year 2002, the Utilities Division included Joseph Rogers, Division Chief; Wilner Borgella; Michelle Cataldo; Alexander Cochis; Mary Flohr; Pat Kelley; Jennifer Koch; Claudine Langlois; Judy Laster; Leo Lawless; Timothy Newhard; Doe Pichard; Karlen Reed; and Andrea Simon.

## ELECTRIC MATTERS

### RATE CASES

- Fitchburg Gas & Electric Light Company, D.T.E. 99-118 (Department of Telecommunications and Energy) On December 31, 1999, the Attorney General filed a complaint, pursuant to G.L. c. 164, § 93, the rate complaint statute, requesting a Department investigation of the distribution rates of Fitchburg Gas & Electric Light Company. The division claimed that the Company's distribution rates for calendar year 1999 were excessive. Section 93 permits the Department to order a reduction or change in the rates upon petition of the Attorney General after notice and a hearing. Hearings were conducted at the end of May and beginning of June, and briefing was completed by July 17, 2001.

On October 18, 2001, the Department found that Fitchburg's current rates were "neither just nor reasonable" and ordered an immediate \$1,740,426 or 8% reduction in distribution rates. This decrease was evenly distributed across all rate classes. Since this reduction remains in effect each year until altered by another rate order, the savings to consumers over time may be very substantial. The Department also issued favorable ruling clarifying the Attorney General's rights to seek rate reductions or improvements in service quality under § 93.

- Sithe New Boston, Docket No. ER02-648 (Federal Energy Regulatory Commission) On December 28, 2001, Sithe New Boston filed with the FERC a Reliability Must Run (RMR) Agreement with the Independent Service Operator New England, Inc. (ISO-NE) to provide generation services in support of transmission during periods of peak demand in Boston. The RMR agreement sought recovery of the charges allegedly associated with provision of reliability services to ISO-NE from Sithe New Boston's electric generating facility located near downtown Boston, Massachusetts. The proposed agreement is in the nature of a transmission support arrangement and is unique to the New England power market. Given the potential precedent that may result from this filing, the division intervened in the matter and requested that the FERC conduct evidentiary hearings into the company's cost of providing this service. The division is participating in ongoing negotiations.

## SERVICE QUALITY AND SUMMER 2001 DISTRIBUTION OUTAGES

- NSTAR, D.T.E. 01-65, Western Massachusetts Electric Company, D.T.E. 01-66, Fitchburg Gas & Electric, D.T.E. 01-67, Massachusetts Electric Company, D.T.E. 01-68 (Department of Telecommunications and Energy) The Restructuring Act required the Department to set service standards to ensure that service quality does not suffer as a result of restructuring. The electric distribution companies (NSTAR, Massachusetts Electric Company, Fitchburg Gas & Electric Light Company, and Western Massachusetts Electric Company) filed Service Quality Plans pursuant to a June 2001 order of the Department. In addition, a number of distribution outages occurred during the summer of 2001.

The division attended 14 statewide public hearings on the proposed service quality filings of the companies. The purpose of the public hearings was to take public comments from customers concerning this summer's distribution outages and determine what penalties should be imposed for poor service. The hearings took place in Brookline, Stoneham, Brockton, Lunenburg, Boston, New Bedford, Worcester, Medfield, Pittsfield, Hyannis, Greenfield, Haverhill, Arlington, and Gloucester. The division offered public statements regarding each company's filing and requested evidentiary hearings on service quality plans and outage reports.

On March 22, 2002, the Department issued an order requiring that both NSTAR and Mass Electric take certain actions to upgrade their distribution systems and report back to the Department by June 2002 regarding their plan for implementing the required changes. The order deferred the request of the division to conduct a management audit of NSTAR until an unspecified date. The order also rejected the request of the division to levy a fine of \$22.5 million against NSTAR for service quality and distribution system failures that caused the outages from summer 2001. Instead, the Department supported NSTAR's proposed calculation that it receive a much smaller fine, and issued a penalty of \$3,207,141 for Boston Edison Company and \$42,358 for Commonwealth Electric Company to be refunded to customers over the following month. The DTE also issued an order on March 22, 2002 that fined Mass Electric \$5,774,000 in net penalties.

## COMPLIANCE WITH DEPARTMENT ORDERS

- Boston Edison Company, D.P.U./D.T.E. 97-95 (Department of Telecommunications and Energy) As a result of the Department investigation of Boston Edison Company's (BECo) request to form a holding company (Docket D.T.E. 97-63), allegations of cross-subsidization by

the utility of its unregulated subsidiaries were made. To address these concerns, the Department opened Docket D.T.E. 97-95 to investigate BECo's transactions with its unregulated affiliate, Boston Energy Technology Group (BETG).

In 1993, the Department authorized Boston Edison to create BETG and allowed the Company to invest up to \$45 million in the affiliate. BETG's subsidiary, BECoCom, entered into a joint venture with Residential Communications Network (RCN) to provide cable and telephone service. To fund the joint venture, Boston Edison made non-cash contributions to BECoCom of the utility's fiber-optic network and the exclusive use of certain utility rights of way. Boston Edison transferred the fiber-optic network at net book value, about \$11.3 million. The division and Cablevision maintained that BECo's fiber-optic network has an economic value of between \$39.1 million and \$67.0 million. Therefore, this transfer violated the Department's previous order limiting the amount of money Boston Edison could invest in BETG.

Evidentiary hearings were conducted on 27 days between December 1998 and April 1999. The division argued that the D.P.U. 93-37 Order did not and could not have authorized Boston Edison to pursue investments outside the areas of DSM services, electric vehicles, and electric generation, which was what the Company requested authority to invest in. Accordingly, the division requested that the Department find the Company's investment in commercial telecommunications services violated D.P.U. 93-37.

On December 28, 2001, the Department issued an order finding that Boston Edison Company exceeded the \$45 million investment cap set by D. P. U. 93-37 by excess investment of \$3,936,881 and ordered that BETG reimburse that amount to NSTAR and that it also refund to customers the interest, at 10.46%, associated with the over-investment of \$3,936,881 from December 31, 1997, in the form of a credit to the Company's transition costs. This resulted in approximately \$2 million in interest charges.

## ELECTRIC RESTRUCTURING MATTERS

- Massachusetts Electric Company and Nantucket Electric Company, D.T.E. 01-68, D.T.E. 01-71B (Department of Telecommunications and Energy) Massachusetts Electric Company filed a service quality plan with the Department. The Electric Restructuring Act required the D.T.E. to establish service quality standards to ensure that service quality does not suffer as result of restructuring.

The division participated in evidentiary hearings regarding the service quality plan filed by Massachusetts Electric Company and Nantucket Electric Company and filed an initial brief maintaining that those companies failed to meet the Department's service quality standards. The Department issued an order imposing a penalty of \$5,774,000 for service quality violations, and that amount was refunded to customers.

- **Default Service Working Group** (Department of Telecommunications and Energy) The Attorney General, Associated Industries of Massachusetts (AIM), the division of Energy Resources (DOER), the Energy Consortium (TEC), the Utility Workers Union of America (UWUA), the Low-Income Energy Assistance Network (LEAN), NSTAR, and Mass Electric convened a working group to discuss how to change the pricing structure and procurement of default service a/k/a provider-of-last-resort service. The Electric Restructuring Act of 1997 created Default Service in order to ensure that electric service would be available to customers in a competitive market as a last resort if a competitive supplier did not provide service, or if a customer was not eligible for standard offer service. In theory, a customer would turn to default service as an interim measure until replacement competitive service became available. In practice, however, few competitive supplier-based options exist in the current market for residential and small commercial and industrial customers. That, coupled with the large number of people who are ineligible for standard offer service based on the prohibitions under the Act, has created a substantial default service customer base.

The Default Service Working Group discussed how to change the pricing and procurement structure of default service in preparation for the end of the statutory transition period in 2005. At the end of the transition period, standard offer service, which is the service provided currently to the majority of residential and small commercial and industrial customers, will end, and if a customer is not served by a competitive supplier, that person will become a default service customer.

This matter was pending at the end of the fiscal year.

#### LEGISLATIVE CRACKER BARREL

The Commonwealth is halfway through the transition period established by the Electric Restructuring Act of 1997 to change from a monopoly-regulated electricity system to a competitive market structure. And, although many of the Act's objectives have been accomplished, some objectives, such as retail competition accompanied by lower prices, remain unfulfilled in part due to legislative deficiencies of the Act. In order to address concerns about the Act and in preparation for the end of the transition period,

Speaker Finneran and Representatives Bosley and Binienda convened a "Cracker Barrel" to host an informal series of discussions on the retail and wholesale electricity market in Massachusetts.

The public discussions focused on generators, transmission and distribution companies, renewable energy and waste-to-energy, competitive suppliers, energy efficiency, consumer and environmental groups, and labor. In addition, they held four public meetings around the state. Based on the suggestions from the sessions, Representative Bosley may draft legislation to amend the Act. This matter was pending at the end of the fiscal year.

## TRANSITION CHARGE RECONCILIATIONS

The transition charge is a mechanism established by the Electric Restructuring Act of 1997 for an electric distribution company to recover its allowable stranded costs as a charge to customers. The company is required by the Electric Industry Restructuring Act, G.L. c. 164, § 1A(a), and 220 C.M.R. § 11.03(4)(e), to annually reconcile or "true-up" its transition charges between what was forecast to be recovered and what was actually in fact recovered through its rates. The division reviews the filing to ensure that only costs permitted by the Restructuring Act are recovered. The division's work in this area included:

- Western Massachusetts Electric Company, D.T.E. 00-33 (Department of Telecommunications and Energy) On March 31, 2000, Western Massachusetts Electric Company (WMECo) filed a request for a Transition Charge Reconciliation covering the period March 1, 1998 through December 31, 1999. The division argued that WMECo proposed an unfair reconciliation of the pension over-funding and post-retirement benefits issues and that the Company's treatment of the investment tax credit (ITC) and Tariff T-9 charges associated with the sale of the West Springfield hydroelectric plants did not provide for the "maximum possible mitigation," as required by the Restructuring Act. On June 7, 2002, the Department issued an Order that agreed with many important positions argued by the division. As a result, customers will save approximately \$7.34 million on their electric bills through reductions to the Company's transition charge.
- Fitchburg Gas & Electric Light Company, D.T.E. 99-110 (Department Telecommunications and Energy). On December 1, 1999, Fitchburg Gas & Electric Light Company (Fitchburg) filed for approval its 1999 transition charge reconciliation. The division intervened and raised many issues concerning the appropriate treatment of particular items that the Company had proposed for inclusion as transition costs. The Company's transition costs were also reviewed in a Department-commissioned audit performed by Arthur Andersen. The Department conducted

four days of evidentiary hearings in May 2000. On October 18, 2001, the Department issued an Order agreeing with many of the division's objections and ordering a \$2.2 million reduction in transition costs.

- Boston Edison Company, D.T.E. 00-82 (Department of Telecommunications and Energy) On November 2, 2000, the Boston Edison Company (NSTAR) filed its 2000 transition charge reconciliation. The filing was the subject of extensive discovery, and the division and the Company reached a settlement that was approved by the Department. The Company agreed to forgo recovery of certain stranded costs to which the division had objected. As a result, ratepayers will save \$2.9 million on their electric bills through reductions to the Company's transition charge.
- Cambridge Electric Light Company and Commonwealth Electric Company, D.T.E. 00-83 (Department of Telecommunications and Energy) Cambridge Electric Light and Commonwealth Electric filed for Department approval of their 2000 transition charge true-up. The division and the Company reached a settlement, approved by the Department, in which the Company agreed to forgo recovery of certain stranded costs to which the division had objected. As a result, ratepayers will save \$7.8 million on their electric bills through reductions to the Company's transition charge.
- Fitchburg Gas & Electric Light Company, D.T.E. 01-103 (Department of Telecommunications and Energy) On December 3, 2001, Fitchburg filed with the Department its Annual Electric Reconciliation Mechanism for 2001. The division contested a number of the charges included in the Company's Reconciliation Filing. The matter is pending at the end of the fiscal year.

## NUCLEAR POWER PLANTS

- Nuclear Waste Yankee Nuclear Power Station, also known as "Yankee Rowe," is a nuclear power plant located in Rowe, MA, that is permanently shut down and is in the process of being decommissioned. This plant was the third nuclear power plant built in the United States and the first built in New England. Yankee Rowe was permanently shut down on February 26, 1992, after more than 31 years of operation. Although the reactor has been dismantled, 533 used fuel assemblies remain in a storage pool on site. During operation, spent fuel rods are stored in a water-filled pool in order to cool down. As part of the decommissioning process, the fuel

assemblies will be removed from the pool and will be stored in large steel-lined concrete containers for future transport.

The Nuclear Waste Fund (NWF) established by the Nuclear Waste Policy Act of 1982 (NWPA) requires a ratepayer surcharge on nuclear power to pay for a central high-level radioactive waste repository for commercial high-level radioactive waste. A site has been picked for the repository at Yucca Mountain, Nevada, and DOE recently recommended Yucca Mountain to President Bush as a site suitable for a central repository. President Bush accepted the Secretary's recommendation, and by statute, the issue now moves to Congress for final action. The division sent letters to both Senator Kerry and Senator Kennedy requesting that they support the designation of Yucca Mountain as the national repository for high-level commercial nuclear waste.

- Cambridge Electric Light and Western Massachusetts Electric Company, D.T.E. 01-94/01-99 (Department of Telecommunications and Energy) The Cambridge Electric Light Company and the Western Massachusetts Electric Company filed petitions with the Department for approval of the sale of their ownership interests in the Vermont Nuclear Power Station to ENTERGY. The Vermont Yankee Station consists of a single nuclear power plant located in Vernon, VT, with a nominal capacity of 540 megawatts. Under the terms of the Electric Industry Restructuring Act, utilities in the Commonwealth are required to sell their generating units. On November 19, 2001, the Company filed a petition with the Department requesting approval of the proposed divestiture and auction sale conducted by J.P. Morgan. The division intervened in the proceeding. After the close of hearings, the Vermont Yankee Nuclear Power Corporation entered into a memorandum of understanding with ENTERGY that addressed the issue of excess decommissioning funds and other areas of concern raised by the division during the hearings. The division then entered into a separate letter agreement with the Company that obligated the Company to pass excess decommissioning funds along to consumers. In light of the pass-through agreement, the division had no objection to the sale. On June 6, 2002, the Department approved the amendatory agreements.

## GAS MATTERS

### RATE CASES

- Berkshire Gas Company, D.T.E. 01-56 (Department of Telecommunications and Energy) The Company sought a distribution rate increase of \$4.6 million and a 10-year Performance Based Rate (PBR) plan. The Company also sought approval to recover a \$62 million merger acquisition premium associated with acquisition of Berkshire by the Energy East Corporation. The division intervened in the proceeding and challenged the alleged revenue deficiency.

The department agreed with numerous arguments of the division and awarded only a \$2.2 million increase — \$2.4 million less than originally requested. In addition, after vigorous opposition by the division, the department did not act on the company's request for approval to recover the \$62 million acquisition premium.

- Blackstone Gas Company, D.T.E. 01-50 (Department of Telecommunications and Energy) On May 15, 2001, Blackstone Gas Company (Blackstone) filed a distribution rate case designed to increase annual revenues by \$220,067 or 36%. Blackstone is the smallest investor-owned utility in the state and serves approximately 1,000 customers in the towns of Blackstone and Bellingham. The division intervened in this matter and challenged the company's plant additions, affiliate transactions, working capital calculations, and numerous other expenses. The department agreed with many of the division's arguments and issued an order increasing rates only \$117,000 per year, saving customers \$103,000 per year.

### GAS COST INCENTIVE AND RISK-MANAGEMENT PROGRAMS

- Bay State Gas Company, DTE 01-81 (Department of Telecommunications and Energy) On October 26, 2001, Bay State filed a Petition with the Department seeking authority to establish a Gas Cost Incentive Mechanism (GCIM Proposal). In its GCIM Proposal, the Company proposed to enter into various financial and physical hedging markets in order to outperform indexes of certain gas supply contracts. The Company further proposed to give customers 25% of any net trading gains realized while the Company absorbed any net trading losses incurred. The provision for the Company to absorb all net trading losses was a concession to the objections and concerns raised by the division.

The division urged the Department to reject the GCIM Proposal, arguing that the GCIM Proposal would harm rather than benefit customers because it would increase indirect transaction costs, the cost of purchased gas, and capital costs. The division further argued that the GCIM Proposal would stifle competition in the gas supply market. Finally, the division also cautioned the Department about the possibility of gaming or price fixing under the GCIM Proposal. The division awaits the Department's Order in this matter.

- Risk-Management Techniques Generic Investigation, DTE 01-100 (Department of Telecommunications and Energy) On December 4, 2001, the department invited public comments in connection with its investigation into the appropriateness of the use of Risk-Management Techniques to Mitigate Natural Gas Price Volatility. In comments filed on January 14, 2002, the division strongly recommended that the department prohibit gas distribution companies from using financial or commodity derivatives to "hedge" the cost of gas that they provide to their customers, arguing that allowing companies to use customer funds to buy these derivatives is fraught with dangers for customers and the utilities; neither utilities, customers, nor regulators are ready to analyze and evaluate the prudence of transactions in derivatives; and allowing companies to speculate in the derivatives markets will increase the financial risks for the companies and increase costs for their customers.

On October 9, 2002, the department issued an Order allowing, but not requiring, LDCs to use financial risk-management instruments to mitigate commodity price volatility. The department held that financial risk-management programs should (1) allow customers to volunteer to participate in the program; (2) maintain the objective of volatility mitigation and price stability rather than the objective of procuring prices below indices; (3) ensure fair competition in the gas supply market; (4) allocate all costs to program participants only; (5) demonstrate the effect the program would have on reliability and transparency of commodity price; and (6) contain no incentive mechanisms.

## TELEPHONE MATTERS

- Verizon's 271 Application to Enter the Long-Distance Market (Federal Communications Commission) Under the 1996 Telecommunications Act, Verizon, as a regional Bell operating company, would be allowed to offer in-region long-distance service in Massachusetts only if it proves under Section 271 of the Act that it satisfies a 14-point local market competitive checklist and shows that its entry into the long-distance market is in the public interest. Notwithstanding

the division's objections concerning Verizon's compliance with the 14-point checklist, the Department and FCC approved Verizon's application. The division appealed the FCC's decision to the D.C. Circuit Court of Appeals on May 11, 2001, asserting that the FCC acted arbitrarily, capriciously, and contrary to law in approving Verizon's Section 271 application. The division maintained that: (1) the FCC should have considered evidence that the prices Verizon charged its competitors to lease its Unbundled Network Elements (UNE) services created a "price squeeze" that precluded profitable competitive entry by competitors; (2) the FCC erroneously concluded that Verizon's Unbundled Network Elements switching rates did not exceed their costs; and (3) the FCC failed to consider evidence that Verizon had not satisfied its Section 271 obligations to resell DSL service to competitors. During Fiscal Year 2002, the division submitted joint initial and reply briefs; the appeal is pending at the end of the fiscal year.

- Verizon's Alternative Regulation Plan, D.T.E. 01-31 (Department of Telecommunications and Energy) On February 27, 2001, the department opened an investigation into Verizon's retail intrastate telecommunications services for Massachusetts and then bifurcated the proceeding: Phase I to investigate whether there is sufficient competition to give Verizon pricing flexibility for business services, and Phase II to explore the appropriate regulatory plan for services where there is not sufficient competition. The division participated in procedural conferences, conducted discovery, filed direct testimony and rebuttal testimony, argued motions, participated in evidentiary hearings, and filed initial and reply briefs.

On May 8, 2002, the department issued its Phase I Order allowing pricing flexibility to Verizon for its business services but not residential services. The department directed Verizon to file a plan for the Phase II investigation that: (1) decreased intrastate switched access service prices to interstate levels; (2) offset the expected lost revenues by raising residential dial tone rates; (3) allowed Verizon limited pricing flexibility up to 5% increases each year without departmental review; (4) made Touch-Tone service mandatory and rolled the price into residential dial tone; and (5) revised pricing for PAL/PASL (wholesale pay phone charges) and certain collocation rates, with dial tone increases for estimated resulting lost revenues. Verizon filed its proposed Phase II Plan on June 5, 2002; the department's Phase II investigation is pending at the end of the fiscal year.

- Wholesale Competition (Unbundled Network Elements) D.T.E. 01-20 (Department of Telecommunications and Energy) As part of a five-year cycle, the department opened its investigation on January 12, 2001 into Verizon's "Unbundled Network Element" (UNE) prices. These are the prices that Verizon charges its competitors to lease parts of its network so that they can provide local telephone service. The division intervened in the docket, filed comments on Verizon's proposal, participated in procedural conferences and evidentiary hearings (January and

February 2002), and filed an initial brief. The department's investigation is pending at the end of the fiscal year.

- Wireless Multi-State Inquiry The division continued its participation in a 26-state investigation into the billing and advertising practices of Verizon Wireless (formerly Bell Atlantic Mobile), Cingular Wireless (formerly Cellular One, now part of Southwestern Bell Wireless), and Sprint PCS. Staff from the Utilities Division and Consumer Protection and Antitrust Division (CPAD) issued letters in March and October 2001 to the three carriers, participated in group and state-specific meetings with Verizon Wireless and Cingular Wireless, and scheduled a multi-state, multi-carrier meeting for August 14-15 in Nashville, TN. The division's inquiry is pending at the end of the fiscal year.
- Special Access Services, D.T.E. 01-34 (Department of Telecommunications and Energy) The DTE investigated charges that Verizon overcharged competitors for special access services (dedicated, end-user-specific phone services that do not go through the public switches). Division staff participated in procedural conferences, technical sessions, and evidentiary hearings. The department's investigation is pending at the end of the fiscal year.
- Network Security, D.T.E. 02-8 (Department of Telecommunications and Energy) The DTE began investigating concerns Verizon raised about the Department's collocation security rules and procedures that allow competitors access to Verizon's central offices (competitors can serve their customers more inexpensively by placing their switching equipment in Verizon's central offices). The division intervened in the case, participated in public hearings and procedural conferences, and conducted discovery. The case is pending at the close of the fiscal year.

## BANKRUPT CARRIERS

- Net2000/Broadview, D.T.E. 02-14 (Net2000/Broadview), Network Plus, D.T.E. 02-15 (Department of Telecommunications and Energy) The division intervened and participated in two dockets in which carriers notified the department that they were pulling out of the Massachusetts local market due to financial difficulties. Both carriers (Net2000 and Network Plus) filed for Chapter 11 bankruptcy, which complicated their ability to give adequate notice to customers of their withdrawal. During the course of these expedited investigations, the division attended emergency public hearings, filed briefs, attended bankruptcy asset auctions, and urged the department to revise its notice requirements so customers had time to find replacement service. The department accepted the division's arguments and gave customers additional notice.

The department also adopted the division's recommendation that it open a generic docket, similar to one in place in New York, to devise generally applicable "mass migration" rules to deal with carrier bankruptcy in the future. The department opened the generic docket at the end of the fiscal year.

## UTILITY MERGERS

- **BEC Energy / COM Energy** (Massachusetts Supreme Judicial Court) On August 16, 1999, the Attorney General appealed the Department's approval of the petition of Boston Edison, Cambridge Electric Light Company, Commonwealth Electric, and Commonwealth Gas Company for the approval of a rate plan associated with the merger of holding companies that created NSTAR. The division principally challenged the standards used in the Department's decision that evaluated and assigned \$959 million in merger acquisition premiums and transactional costs to the customers of the new enterprise. In this appeal the division seeks the establishment of just and reasonable rates by a fair sharing of merger savings. Regardless of the level of anticipated merger-related savings, unless those savings are passed along to customers in a meaningful manner, customers pay for the merger and NSTAR enjoys the benefits in the form of higher profits. On June 24, 2002, the division filed a brief with the Supreme Judicial Court.

## OUTREACH, EDUCATION, AND TRAINING

**Senior Citizens Group Presentations** The Elder Hotline regularly conducts presentations on behalf of the senior citizen community on matters affecting the community. These presentations provide information and awareness on various consumer issues, including fraud, scams, sweepstakes, charitable giving, and utility matters. The division participates in the presentations by explaining utility bill complaints and the role of the Utility Hotline, utility service and related discount programs available to seniors, telephone fraud and scams, reading and understanding utility bills, and common consumer issues and complaints that arise within the division.

**Utilities Hotline (1-888-514-6277)** The division established a hotline number (1-888-514-6277) for consumers who had questions or complaints about their electricity, gas, or telephone service. Since the Hotline was announced on March 5, 2002, it has received about 100 calls each week.

## SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

National Association of Attorneys General (NAAG) Energy Conference Attorney General Reilly and Vermont Attorney General William Sorrell hosted a one-day Energy Conference at the Fall Meeting of the Eastern Region of the National Association of Attorneys General on November 5, 2001. Energy sector leaders from government, academia, and the private sector participated in the conference, and approximately 80 people, including staff from Attorneys General's Offices throughout the Eastern Region, consumer advocates, government officials, business leaders, and press attended the conference.

New England Market Power Study The division and the ISO-NE commissioned a study of electric market power issues in the New England market by James Bushnell and Celeste Sara of the University of California Energy Institute. "An Empirical Assessment of the Competitiveness of the ISO New England Electricity Markets" was a preliminary study of the competitiveness of the New England electricity market for the period May 1999 through May 2001.

The study used a "Competitive Benchmark Analysis" methodology, comparing the "benchmark," an estimate of the market price (a hypothetical competitive market where no firm can exercise market power), to observed market prices. The study concluded that, based on the analysis of available data, prices for power in New England were on average between 4% and 16% higher than the costs estimated for a perfectly competitive market. The results were consistent with the results of similar studies of the California and PJM electricity markets. The division plans further studies in this area.

## STATISTICAL SUMMARY

During Fiscal Year 2002, the Utilities Division saved customers approximately \$26,483,426. The major recoveries occurred in the following cases:

Fitchburg Gas & Electric Light Company, D.T.E. 99-118	\$1,740,426
Fitchburg Gas & Electric Light Company, D.T.E. 99-110	\$2,200,000
Boston Edison Company, D.P.U./D.T.E. 97-95	\$2,000,000
Boston Edison Company, D.T.E. 00-82	\$2,900,000
Western Massachusetts Electric Company, D.T.E. 00-33	\$7,340,000
Cambridge Electric Light Company/ Commonwealth Electric Company, D.T.E. 00-83	\$7,800,000
Berkshire Gas Company, D.T.E. 01-56	\$2,400,000
Blackstone Gas Company, D.T.E. 01-50	\$103,000
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<b>TOTAL</b>	<b>\$26,483,426</b>

## MEDIATION SERVICES DIVISION

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### SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

#### STUDENT CONFLICT RESOLUTION EXPERTS

Founded in 1989, the Student Conflict Resolution Experts program (SCORE) is a school-based program that uses trained student mediators to resolve conflict among peers. The SCORE program provides grants for the development of school mediation programs using trained student mediators to resolve violent and potentially violent conflicts among their peers. The SCORE program forges partnerships between educators and mediators to establish quality student-centered mediation programs in the Commonwealth's schools to prevent disputes from escalating into violence.

Typically, mediated conflicts have involved physical fights, threats, harassment, and rumors among students who know one another. In Fiscal Year 2002, the Attorney General awarded \$420,000 to 26 schools across Massachusetts. Among the communities participating in the SCORE program were Boston, Dartmouth, Fall River, Greenfield, Holyoke, Lowell, Lynn, Malden, Medford, Pittsfield, Quincy, Somerville, Springfield, Taunton, Wakefield (located in a regional vocational high school that serves 12 communities north of Boston), and Worcester.

Student mediators in SCORE programs mediated 2,385 conflicts involving 6,201 youth; 97% of these were resolved through the use of peer mediation. The conflicts included situations involving physical fights, harassment, name-calling, stealing, threats, bullying, property damage, and rumors.

In addition to the financial grants provided to the schools by the Attorney General, division staff maintained close contact with participating schools through grant monitoring and by offering technical assistance. During the fiscal year, division staff served as training faculty for student mediator training events in which 168 new mediators received training. In addition, division staff also provided advanced training and support to adult mediation program coordinators.

## CONFLICT INTERVENTION TEAM

The Conflict Intervention Team (CIT), led by the Attorney General's Office, is a collaborative project of the Attorney General, the Massachusetts Department of Education, and the Massachusetts Association of Mediation Programs and Practitioners. Composed of a network of specially trained community mediators, CIT provides mediation services, on a short-term basis, to schools experiencing large-scale conflicts. In addition to the in-kind contributions of Attorney General staff assigned to the project, CIT is funded by a grant from the Hewlett Foundation.

In Fiscal Year 2002 CIT was dispatched to address conflict in five Massachusetts schools. Of these five schools, three were high schools, two were middle schools, two were suburban schools, and three were urban schools. Race-related issues were a significant factor in four of the five conflict situations; females were the central perpetrators of conflict in four of the interactions.

## FACE-TO-FACE CONSUMER MEDIATION

The Face-to-Face Consumer Mediation Program (FTF), established in 1983 to provide mediation services for the resolution of consumer and landlord/tenant disputes, offers disputants a convenient, non-adversarial alternative to court action. In Fiscal Year 2002, the Office of the Attorney General awarded grants, totaling \$315,000, to nine community mediation programs across Massachusetts, including programs in Brockton, Fitchburg, Greenfield, Haverhill, Hyannis, Lowell, Somerville, Springfield, and Worcester.

This \$315,000 investment in mediation resulted in the return of \$1,111,827 in cash and \$202,465 in non-cash value to Massachusetts consumers. The nine community programs mediated 2,306 disputes involving auto repairs, home improvement, landlord/tenant issues, debt collection, and broken contracts.

In addition to the financial grants provided to community mediation programs, division staff maintained close contact with participating programs through grant monitoring activities and technical assistance. Throughout the fiscal year, division staff frequently served as training faculty for basic training sessions for new volunteer mediators, provided advanced training for experienced community mediators, oriented new program coordinators, and provided regional forums for participating programs to share strategies and resources.

## OUTREACH, EDUCATION, AND TRAINING

During Fiscal Year 2002, division staff participated in a wide range of outreach and training events concerning the application of mediation and violence prevention strategies:

**A Prerequisite for Safe Schools: Protecting Students from Hate Crimes and Harassment**

(October 11, 2001 and March 13, 2002) Mediation Services Division staff, in collaboration with staff from the Civil Rights Division and the Community-Based Justice Bureau, designed and delivered *A Prerequisite for Safe Schools: Protecting Students from Hate Crimes and Harassment*, two in a series of statewide conferences for teachers, school administrators, and law enforcement professionals. These conferences, attended by 375 persons, were held in Milford and Falmouth.

**Working Together to Change the Sports Culture in Massachusetts: The Massachusetts**

**Alliance for the Promotion of Sportsmanship** (November 18, 2001) Division staff, in collaboration with staff from the Criminal Bureau, designed and delivered a general session titled *Working Together to Change the Sports Culture in Massachusetts: The Massachusetts Alliance for the Promotion of Sportsmanship* at the 8th Annual Sportsmanship Summit of the Massachusetts Inter-scholastic Athletic Association. This session, which was attended by nearly 400 student athletes, coaches, athletic directors, and school administrators, focused on preventing and responding to violence in sports.

**Recognizing and Responding to Hate and Harassment in Schools** (January 11, 2002 and April 2, 2002) Division staff, in collaboration with Civil Rights Division staff, designed and delivered a *Recognizing and Responding to Hate and Harassment in Schools* training for Marlborough Public Schools (nearly 700 school personnel attended) and 30 administrators of the Nashoba Valley Regional School District.

**Mediating with Gay and Lesbian Families** (February 9, 2002) Division staff served as a presenter at a daylong training titled *Mediating with Gay and Lesbian Families* at the Community Dispute Resolution Center in Cambridge.

**Promoting Tolerance and Respect: A Symposium on Addressing Hate Crimes, Discrimination, and Harassment** (April 20, 2002) Division staff, in collaboration with Civil Rights Division staff, designed and delivered *Promoting Tolerance and Respect: A Symposium on Addressing Hate Crimes, Discrimination, and Harassment*. This symposium, attended by nearly 50 persons, was designed specifically to meet the needs of the Muslim, Arab, and Southwest

Asian communities in Lowell as a response to acts of hate and harassment that occurred in the wake of September 11th.

**Citizen Schools** (April 2002) Division staff participated in the Attorney General-sponsored *Citizen Schools* youth apprenticeship program by delivering a workshop about active listening for students of the Grover Cleveland Middle School in Dorchester.

**Internet Safety** (May 15, 2002) A division staff member served as a trainer for an Internet safety segment on AT&T Broadband's *Homework Helpline* cable television show. The one-hour segment aired in Boston, Framingham, and Brookline.

**Shaken Baby Syndrome Prevention** (May 30, 2002) Division staff, as a Children's Protection Project activity, assisted the Central Massachusetts Shaken Baby Syndrome Round Table to develop and deliver a conference titled *From Awareness to Action: The Central Massachusetts Shaken Baby Syndrome Prevention Campaign*. This event, attended by over 200 persons, served to heighten the awareness of the incidence of SBS and to launch a coordinated prevention response.

**2002 Peacemakers' Summit** (June 2002) Division staff served as members of the planning committee for the 2002 Peacemakers' Summit, an event that attracted nearly 900 youth mediators from across Massachusetts at Hampshire College on June 5 and June 6, 2002. At the Summit, MSD staff designed and delivered *Tuning In*, a workshop about effective communication in mediation, to 50 elementary school students, and, in collaboration with the Western Massachusetts Division, designed and delivered *Recognizing and Responding to Bullying, Harassment, and Hate in Schools*, a workshop for 50 elementary and middle school students.

In addition to outreach events, MSD staff served on the Massachusetts Violence Prevention Task Force, the Massachusetts Department of Public Health's Club Drug Task Force, the Massachusetts Hate Crimes Task Force, and the Attorney General's Coalition on Underage and Problem Drinking.

# REGIONAL OFFICES

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WESTERN MASSACHUSETTS

CENTRAL MASSACHUSETTS

SOUTHEASTERN MASSACHUSETTS



## **REGIONAL OFFICES**

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### **WESTERN MASSACHUSETTS DIVISION**

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The Western Massachusetts Division of the Office of the Attorney General, located at 1350 Main Street, Springfield, and a part of the Regional Operations Division of the Executive Bureau, is responsible for handling affirmative criminal and civil investigations and litigation, as well as civil defensive litigation and administrative law matters arising in the four Western Massachusetts counties: Hampden, Hampshire, Franklin and Berkshire. The Government Bureau's statewide Municipal Law Unit is also housed in the Western Massachusetts Division and provides by-law review and approval, as well as training and advice to town and municipal officials throughout the state. The Business and Labor Protection Bureau (BLPB) Fair Labor Division's Western Massachusetts office is responsible for enforcing the state's wage and hour laws on behalf of the citizens of Western Massachusetts. The division also handles a large number of consumer complaints and provides educational outreach to area residents. The division consists of full-time staff members: a division chief, deputy division chief, ten assistant attorneys general, three civilian investigators, a consumer liaison, one investigator assigned to BLPB's Medicaid Fraud Unit, four Massachusetts State Police Officers, four Fair Labor Division inspectors, one administrative assistant, one paralegal and six support staff.

During Fiscal Year 2002, the Western Massachusetts Division staff included Janice Healy, Division Chief; Michelle Aubé; James Clark; Susan Decker; Joseph Drzyzga; Robyn Gay; John Gibbons; Sandra Giordano; Shirley Gouvan; Bart Hollander; Timothy Jones; Karen Kapusta; Michael Konderwicz; Kelli Lawrence; Susan Midura; Tom Nartowicz; William O'Neill; Robert Ritchie; Laurie Rowan; Amy Royal; Michael Russo; Palmer Santucci; Matthew Shea; Cynthia Sherman-Black; Maria Smith; Steven Spencer; Christopher Speranzo; Richard Steward; John Talbot; Rosemary Tarantino; Theresa Ukleja; Eva Wanat; Mark Weiner; James Whitcomb; and Judy Zeprun Kalman.

### **SIGNIFICANT CASE SUMMARIES**

The following provides an overview of cases undertaken by the Western Massachusetts Division during Fiscal Year 2002.

## BUSINESS AND LABOR PROTECTION BUREAU

- **Environmental Enterprises & Associates, Inc.** This company performs asbestos removal on projects all over the state. It is located in Norwell. An audit of their work at Greenfield Community College found that they did not pay the prevailing wage to 26 workers. A citation was issued on August 14, 2001. The employer failed to pay or appeal within the allowed period and was debarred for one year. Eventually, the employer paid restitution of over \$4,800.00 and a fine of \$850.
- **Carroll's Market** Carroll's is a market in Miller's Falls. A two-year audit showed violations of the Sunday and Holiday premium pay laws. Carroll's signed a settlement agreement and paid \$10,000.
- **J.D. Rivet** This medium sized roofing company does a large volume of Prevailing Wage work in Western Massachusetts. At the Nessacus Middle School in Dalton, they used seven apprentices without proper supervisory ratios during their work in the summer of 2000. They received a citation and paid \$5,137.87 restitution and the \$320 fine.

STATISTICAL SUMMARY

## NON-PAYMENT OF WAGES AND PREVAILING WAGE MONIES

QUARTER	COMBINED		CASES OPENED	CASES CLOSED	CALLS*
	RESTITUTION	& PENALTIES/FINES			
1st	\$22,598		187	234	3,038
2nd	\$43,468		146	197	3,190
3rd	\$37,359		134	172	1,803
4th	\$53,712		210	184	2,372
<b>TOTALS</b>	<b>\$157,137</b>		<b>677</b>	<b>787</b>	<b>10,403</b>

\*Walk-ins not tracked during Fiscal Year 2002

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## INSURANCE AND UNEMPLOYMENT FRAUD

- **Commonwealth v. Armand Arce** (Springfield District Court) Armand Arce was a former East Longmeadow insurance agent who pleaded guilty on August 28, 2001 to one count of broker embezzlement and one count of Larceny Over \$250. He was sentenced to sixty days in the House of Correction, suspended for two years with probation. He was ordered to pay \$5,550.50 in restitution. The thefts involved two former insurance clients Arce represented through his own company, Money Management in East Longmeadow. In 1996, the clients paid Arce to buy new policies on their behalf. Instead of using the money to buy the policies, Arce deposited the money into his business account for his own use.
- **Commonwealth v. Robin Hayward** (Springfield District Court) Robin Hayward, of Springfield, Massachusetts, pleaded guilty in Springfield District Court on February 20, 2002, to one count of workers' compensation fraud and one count of Larceny Over \$250. She received a sentence of nine months in the House of Correction, suspended for three years with probation. She was ordered to pay \$11,849 in restitution. In 1986, Hayward was injured while working for Baystate Medical Center in Springfield. While collecting workers' compensation benefits for that injury, Hayward failed to report that she was working full-time for Hampshire Eye and Ear in Northampton.
- **Commonwealth v. Andrew Budz** (Pittsfield District Court) Andrew Budz, a dentist in Williamstown, Massachusetts, admitted to sufficient facts on August 16, 2001 to one count of larceny over \$250 and one count of insurance fraud. The matter was continued without a finding for a period of a year, and the defendant was ordered to pay \$3,000.00 in court costs and restitution. The amount of the restitution was \$2,540.07.

The facts established that Dr. Budz filed a false claim relating to two pieces of dental equipment which he alleged had been damaged as the result of a sewer backup in 1998.

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## STATISTICAL SUMMARY

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### INSURANCE AND UNEMPLOYMENT FRAUD DIVISION STATISTICS

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Restitution	\$44,826
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Fines	\$3,000
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## CRIMINAL BUREAU

- **Commonwealth v. Redfern** This matter relating to the improper storage of firearms by the Chief of Police in Easthampton was referred to the Attorney General's Office by the Northwestern District Attorney's Office. In July of 2001, Easthampton Police Officers responded to the home of Chief Robert Redfern regarding a report that while the Police Chief was on vacation, his teenage daughter had invited several friends to the house who had stolen the Chief's police cruiser and accessed a firearm. While at Chief Redfern's home, police discovered 27 firearms at the home that had not been properly secured in a locked container or with a trigger lock. Complaints were brought against the Chief in Northampton District Court, and on February 1, 2002, Chief Redfern admitted to facts sufficient to warrant a guilty finding on 27 counts of illegally storing a firearm. The Court continued the case without a finding for one year and assessed Chief Redfern \$1,000 in court costs.
- **Commonwealth v. Lewis** Through an undercover investigation conducted by AGO State Police Sgt. John Gibbons, Tehran Lewis was identified as a supplier of large amounts of crack cocaine in the Chicopee and Springfield areas. Lewis was indicted in September of 2001 for multiple counts of trafficking cocaine. Following a trial in the Hampden Superior Court, Lewis was found guilty on all counts, as charged. He was sentenced to ten years in State Prison.

## GOVERNMENT BUREAU

- **Lynch v. Commonwealth** This case involved an appeal by the Commonwealth from a decision of the Hampden Superior Court which ordered the Commonwealth to provide the plaintiffs, as former employees of the abolished Hampden County, with comprehensive dental insurance. The Appeals Court reversed the Superior Court decision and held that the statute which abolished Hampden County does not require the Commonwealth to provide county retirees with comprehensive dental insurance.
- **Carmen Quinones v. Department of Social Services (Hampden Superior Court)** This G.L. c. 258 complaint asserted claims in negligence against the Department of Social Services and individual claims against DSS, as well as claims of intentional infliction of emotional distress, false imprisonment and civil rights violations. All claims arose out of an alleged mis diagnosis of sexual abuse by an emergency room physician and the resulting removal of the Plaintiff's children from her custody. The plaintiff asserted that the Commonwealth had permitted an unreasonable

retention of the children in foster care and also alleged that two of the children were injured while in foster care. The plaintiff's initial demand was \$70,000 and reduced to \$22,500 before the trial. Following trial, the jury returned a verdict in favor of DSS and individually named DSS supervisor on all counts of the plaintiff's complaint.

- Douglas Welenc, by Douglas and Susan Welenc v. Greenfield Public Schools and Massachusetts Department of Education (Bureau of Special Education Appeals) (Franklin Superior Court) In this tort case, the parents of a minor sought reimbursement for their private educational placement of their child, insofar as they felt the Individual Education Plan (IEP) prepared by the co-defendant, Greenfield Public Schools, was insufficient for their child's special education needs. The BSEA had determined that the IEP was appropriate under the state and federal guidelines. The plaintiffs' last demand for settlement was for payment/reimbursement in the amount of \$40,000.00 for their private school placement. Following a hearing on cross motions for summary judgment, the Superior Court granted summary judgment in favor of the state defendants.
- Prudance and Robert Duzan v. University of Massachusetts at Amherst (Hampshire Superior Court) This was a tort claim arising as a result of a slip and fall in an icy parking lot at the Mullins Center (arena) at UMASS-Amherst. The plaintiff had incurred more than \$16,000.00 in medical specials, and her spouse asserted a loss of consortium claim. Plaintiff's demand for the two claims was \$85,000. Following mediation, settlement was achieved for all claims in the total amount of \$15,000.
- Laliberte v. Department of Mental Retardation (DMR) (Hampden Superior Court) In this motor vehicle tort claim, the Plaintiff asserted that she was severely injured in an automobile accident wherein she was struck by a car being driven by an employee of DMR. The complaint alleged that the driver failed to drive appropriately for the icy road conditions and was unable to stop without rear-ending her vehicle. The plaintiff's initial demand for five separate claims was \$500,000. Three of the claims were dismissed. The case was ultimately settled for \$45,000.00.
- Robert Samble v. Massachusetts Highway Department (Hampden Superior Court) This nuisance action arose out of a claim by a riverfront landowner that dredging and other activities undertaken in connection with the construction of Interstate 91 in the 1950's had altered the bed of the Connecticut River in such a way as to cause silt to accumulate on his property. The Superior Court determined that he would be unable to prove his allegations at trial and entered summary judgment in favor of the Massachusetts Highway Department and the Town of Longmeadow.

- David L. Krutiak and Karen Krutiak v. Department of Highways (Berkshire Superior Court) This eminent domain action arose out of the acquisition of two acres of industrial property in Adams, MA. The plaintiffs demand was \$872,500 and they were awarded \$161,000 at trial and appealed that verdict to the Appeals Court, claiming that the trial judge had improperly admitted certain evidence and improperly excluded other evidence. The Appeals Court affirmed the judgment.
- Geraldine Gardiner v. Division of Banks (Hampden Superior Court) In this employment discrimination action, plaintiff claimed that she was denied a promotion to Bank Examiner IV based on age and race. Plaintiff's demand was \$100,000 and an offer of \$15,000 was rejected. Following trial, a jury verdict was returned in favor of the Commonwealth.

#### PUBLIC PROTECTION BUREAU

- Commonwealth and Shauna Lynn v. Richard Kowalski and Columbia Delta Company (Housing Court - Western Division) In this housing discrimination action filed by the Commonwealth on behalf of Shauna Lynn, a single mother with two young children, it was alleged that the defendants made discriminatory statements indicating a preference against renting to a family with children, imposed different terms and conditions on the tenancy because young children shared the rental premises and retaliated against Ms. Lynn by initiating eviction proceedings against her when she complained about the discriminatory practices. Following mediation, the case was settled for \$25,000 and a consent decree containing prohibitory and injunctive relief was signed by the defendants and approved by the Housing Court.

#### STATISTICAL SUMMARY

As of June 30, 2002, excluding matters being handled by the FLBP Division, there were a total of 268 cases pending in the Western Massachusetts Division.

During Fiscal Year 2002, 72 new civil defensive cases were assigned and 35 affirmative cases were assigned. In addition, one new case was assigned to a special assistant attorney general and a WMAS assistant attorney general was assigned to supervise the litigation and handling of that case.

The defensive litigation cases were assigned in the following categories:

Administrative Law	24
Torts	17
Civil Rights/Employment Discrimination	8
Declaratory Judgment	3
Eminent Domain	4
Miscellaneous	16

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**TOTAL** 72

The affirmative litigation cases were assigned in the following categories:

Criminal	15
Sexual Offender Registry Board	10
Consumer	1
Insurance and Unemployment Fraud	7
Civil Rights	2

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**TOTAL** 35

In addition, there were 13 criminal investigations brought in Western Massachusetts. The Western Mass. Consumer Liaison received 457 written consumer complaints and fielded 416 telephone complaints. WMAS division staff fielded 2,200 consumer calls.

During Fiscal Year 2002, 99 cases were closed by division staff. Total dollars saved the Commonwealth on civil defensive litigation cases were \$790,000.00. Total dollars returned to consumers were \$1,740.00.

## SIGNIFICANT INITIATIVES, EFFORTS AND ACTIVITIES

In January 2002, the Western Mass. Division relocated its offices to 1350 Main Street in Springfield, thereby fulfilling Attorney General Reilly's long-standing commitment to integrate the staff of the Western Massachusetts Fair Labor Business Practices Division, who had been operating from a separate and substandard location, into the offices of the Western Mass. Division.

As a result of having a fully integrated office in Western Massachusetts the Attorney General is able to more effectively meet the needs of the public and deliver a full array of legal services to both the agencies and individuals throughout Western Massachusetts.

Civil Defensive Litigation The Western Mass. Division continued to provide the highest quality of legal representation to agencies and individual state employees required to respond to litigation filed by members of the public. During Fiscal Year 2002, there were 225 civil defensive litigation matters active in the division. Successful resolution of many of these matters during Fiscal Year 2002 resulted in a savings of \$790,000 for the Commonwealth.

Civil Rights Division The Attorney General's Western Mass. Division continued to meet its statutory responsibilities to affirmatively prosecute housing discrimination actions throughout Western Massachusetts. However, due to a staffing shortage, in order to meet this responsibility, it was necessary to assign a defensive litigation assistant attorney general to handle these matters. Additionally, during Fiscal Year 2002, a collaborative training program was developed with Western New England Law School's Civil Rights Clinic in which law students were assigned to assist WMA Division staff in the handling of housing discrimination cases.

During Fiscal Year 2002, the Western Mass. Division also continued with its efforts to assist schools throughout the region in ensuring that students' civil rights are protected. To that end, division staff participated in numerous outreach and training efforts designed to educate school personnel at all levels regarding the key components of a comprehensive student civil rights policy, along with more specific trainings focusing on the prevention of bullying, harassment, hate crimes, and civil rights violations.

Consumer Division Due to fiscal constraints, the division's ability to initiate affirmative litigation on behalf of consumers in Western Massachusetts was limited. Being able to effectively respond to consumer complaints is one of the highest priorities of the Attorney General and the Western Mass. Division. Through the efforts of our division's consumer liaison, as well as the efforts of our civil investigative staff, and local consumer protection programs which are funded through the Attorney General's Office, the needs of consumers throughout the region were effectively met. Additionally, our division continued to

advance the Attorney General's priorities in the area of elder protection through cross-bureau outreach and education programs, including sponsoring an elder protection conference designed to educate senior and elder protection providers regarding scams, fraud, and abuse.

## OUTREACH, EDUCATION, AND TRAINING

During Fiscal Year 2002, staff in the WMAS regional office were actively engaged in advancing numerous cross-bureau initiatives and trainings. Division staff continued their commitment to the Attorney General's child protection priorities through their participation in the Attorney General's School Safety Task Force, and on the local level, by volunteering with the Springfield Schools Volunteer Program. Additionally, division staff played an active role in assisting the Springfield School System with the implementation of its student civil rights policy by conducting numerous civil rights training programs for school personnel. The division chief, as well as the deputy division chief, four assistant attorneys general, and six support staff participated in a variety of programs, including the Read-Aloud Program, Tutoring Programs, the Living Historian Program, and the Kids-Voting Program. Two division assistant attorneys general conducted Internet Safety Training programs to over five hundred school students. WMAS staff also participated at the local level in the Attorney General's Office Holiday Toy and Food Drive by coordinating a clothing and food drive, as well as a holiday toy drive to benefit ARCH, the YWCA's domestic violence shelter program. Additionally, addressing the needs of elder consumers was designated a priority of the Public Protection Bureau. Regional staff advanced this priority by conducting numerous educational training programs for area seniors and elder service providers.

In order to foster communication and cooperation among local law enforcement agencies, staff attended the monthly meetings of the WMAS Chiefs of Police Association. Increasing our connections with local community groups was advanced through staff participation in the Springfield Violence Prevention Task Force, the Big Brothers/Big Sisters Program, and the Peacemaker's Peer Mediation Summit. Assistant attorneys general also actively fostered our Office's relationship with the local legal community through participation in the Women's Bar Association, the Hampden County Bar Association, and as panelists for legal programs at Western New England College School of Law. Additionally, staff in the Municipal Law Unit continued to provide numerous training and educational programs for towns and municipalities throughout Western Massachusetts.

Division staff also actively participated in numerous cross-bureau working groups, including the Diversity Committee, the Web site Committee and the Professional Development Unit working group.

Lastly, Western Massachusetts staff participated in numerous professional development training programs presented by the Attorney General's Institute.

## **CENTRAL MASSACHUSETTS DIVISION**

The Central Massachusetts Division ("CMAS") strives to be an office reflective of and responsive to the needs of the Central Massachusetts community. CMAS staff continued to increase the Office's visibility and accessibility to the region's constituents. CMAS focused on the Office's affirmative litigation capacity and pursued affirmative litigation in the areas of Civil Rights, Consumer Protection, and Insurance Fraud.

The CMAS Division during Fiscal Year 2002 included the following staff members: Maria Hickey Jacobson, Chief; Patricia Bopp; Margaret Cooke; Robert Galvani; John Gatti, Jr.; James Gentile; Salvatore Giorlandino; Karen Leary; Michael Mard; John O'Leary; Kristen (Dionisi) O'Rourke; Wendy Parsons; David Resendes; and Denise Romero.

### **SIGNIFICANT CASE SUMMARIES**

#### **BUSINESS AND LABOR PROTECTION BUREAU**

Highlights of the cases handled by John O'Leary of the Insurance Fraud Division in Fiscal Year 2002 are the following:

- Commonwealth v. Bryant (Worcester Superior Court) On December 18, 2001, after a six-week trial, a 12-person jury returned guilty verdicts on all three indictments alleging Conspiracy to Commit Larceny Over \$250 against Michael Bryant, an attorney who was employed at the former Worcester law firm of Ellis & Ellis. The indictments alleged that Bryant conspired with the law firm's partners, James N. Ellis, Jr. and Nicholas J. Ellis; his client, Jay P. Rosenfield; and Shrewsbury physician Dr. Mario Moretti to submit false statements to Liberty Mutual (and National Grange) in the course of several motor vehicle insurance claims. On January 2, 2002, Judge Bohn sentenced Bryant to two and one half years in the House of Correction, 12 months to serve, and the balance suspended with supervised probation for five years. Bryant was ordered to pay \$15,000 to the Commonwealth as costs of prosecution.

- Commonwealth v. Peter A. Natile (Middlesex Superior Court). Defendant was scheduled to stand trial in Middlesex Superior Court on June 4, 2002, for indictments alleging Workers' Compensation Fraud, Larceny Over \$250, Attempted Larceny Over \$250, and Perjury (four counts). The Commonwealth was prepared to introduce evidence that Defendant was working full-time, and getting paid in his wife's name, for approximately 12 of the 22 months that he collected Temporary Total Disability Benefits. The Commonwealth also was prepared to prove the theft of approximately \$22,000.00, in addition to the defendant's attempts to steal an additional \$25,000.00 via a lump-sum settlement of the claim with the insurance company. The Commonwealth was also prepared to prove that the defendant committed perjury in his testimony before the Grand Jury which indicted him. On the day before trial was scheduled to commence, Defendant entered a change of plea on all seven indictments. Judge Hamlin accepted Defendant's Guilty pleas. Defendant was sentenced to seven years probation on all matters, and sentenced to six months home confinement on the bracelet program and ordered to pay \$25,185.14 in restitution to Granite State Insurance Company/AIGCS (\$22,635.14 in fraudulently obtained benefits, plus \$2,550.00 in investigative expenses).

#### GOVERNMENT BUREAU:

Highlights of the cases handled by Salvatore Giorlandino, Kristen O'Rourke and Maria Hickey Jacobson of the Government Bureau's Trial Division in Fiscal Year 2002 are the following:

- Wojcik v. State Lottery Commission, State Treasurer O'Brien, et. al. (U.S. District Court for D.Mass.). This is a federal civil rights suit arising out of the Lottery Commission's firing of the plaintiff for misconduct in September 1999. The plaintiff alleged that he was wrongfully terminated and sought reinstatement to his old job as well as compensatory damages. In June 2001, the U.S. District Court (Young, CJ.) granted the defendants' motion for summary judgment. The plaintiffs appealed. In May 2002, the U.S. Court of Appeals for the First Circuit heard the appeal. In August 2002, the First Circuit affirmed the defendants' summary judgment award. Wojcik v. Massachusetts State Lottery Commission, et. al., 300 F.3d 92 (1<sup>st</sup> Cir. 2002).
- Commonwealth v. Phillips (Suffolk Superior Court). The "Greedy Granny Case" is a civil suit by the Commonwealth to recover nearly \$1 million in pension overpayments made by the State Treasury to a retired school teacher. In June 2001, the Court (Ball, J.) entered a judgment for the Commonwealth for nearly \$1 million. In December 2001, the Court (Volterra, J.) ordered the defendants' attached assets (approximately \$250,000.00 to \$300,000.00) to be transferred to the Commonwealth.

- Strahan v. Durand (U.S. District Court, Boston). The Commonwealth settled this seven year old federal Endangered Species Act case involving Northern Right Whales with the plaintiff-intervenor Conservation Law Foundation in January 2002.
- Fisher v. State Police (Worcester Superior Court). This is a highly litigious "Whistle Blower" case arising out of State Police disciplinary action taken against a State trooper for misconduct. During fiscal year 2002, Assistant Attorneys Generals Jacobson and Giorlandino spent a great amount of time seeking dismissal of the case, responding to the plaintiff's Amended Complaint and responding to the plaintiff's discovery requests. Discovery is ongoing.
- Mobil Oil Exxon Corp. v. Massachusetts Highway Department (Middlesex Superior Court). This was an eminent domain taking of a vacant lot, which was once a gas station, located along Route 20 in Sudbury. The plaintiff claimed damages of \$375,000 - \$430,000. The Commonwealth's expert appraiser determined the plaintiff was entitled to damages of \$128,000 - \$172,000, depending on the likelihood of a zoning variance from the town of Sudbury. The pro tanto amount was \$29,800, and the case settled for \$150,000 in new money including interest.
- Davis v. Commonwealth (Middlesex Superior Court). This wrongful death action arose from a jailhouse suicide. The Commonwealth's position was that the plaintiff failed to comply with the presentment requirements under G.L. c. 258, § 4, and improperly named the following defendants: Sheriff DiPaola, Superintendent Norton, and Doctor Oman, all Commonwealth employees acting within the scope of their employment and therefore immune from suit pursuant to G.L. c. 258, § 2. The defendants' motion for summary judgment was allowed (Gants, J.) dismissing all claims against all defendants.
- Massachusetts Highway Department v. City of Boston, Boston Redevelopment Authority and MDA Park LLC (Suffolk Superior Court). Massachusetts Highway Department requested consideration of this affirmative litigation to recover a parcel of land in Park Square, Boston, which the Commonwealth claimed it owned based upon the interpretation of an old *Order of Taking*. A complaint was drafted to recover the land and/or recoup money damages. However, before the complaint was filed, there were negotiations which resulted in a settlement agreement in May 2002. Among other things, the settlement provided that the Commonwealth be compensated in the amount of \$167,000.00 and the Commonwealth agreed to no longer assert its claim of ownership to the subject property.

- Kahanic v. DSS, et. al. (Worcester Superior Court). This case was filed in September 2001 and is a wrongful death and negligence action against the Department of Social Services (ADSS) and a private foster care agency arising out of DSS' placement of an infant with private foster parents. The child disappeared in November 1998 while in the foster parents' care (he has been missing for more than three years), and his natural father, the plaintiff, contends that the child has died even though the Probate Court has not declared him dead. (See related case of Santos v. DSS below) This is a high publicity case.
- Santos v. Department of Social Services (Worcester Superior Court). This case was filed in December 2001 by the natural mother of the missing child subject of the suit in Kahanic. In August 2002, the Court (Sanders, J.) dismissed the suit against DSS for failure to comply with the Massachusetts Tort Claims Act's presentment requirements. This is a high publicity case.

#### PUBLIC PROTECTION BUREAU:

Highlights of the cases handled by Margaret Cooke with the assistance of Investigator Jim Gentile of the Public Protection Bureau in Fiscal Year 2002 are the following:

- Commonwealth v. Great Lakes Camps, Inc. d/b/a Quabbin Camps, George Deren and Charles Sub (Worcester Superior Court). This affirmative litigation case involves approximately 50 families who paid between \$4,000.00 and \$8,000.00 for a specialized summer camp for children with autism and asperger syndrome. The camp never opened. A complaint was filed February 4, 2002. To date, Quabbin Camps has neither refunded the parents money nor compensated the parents/consumers for any additional expenses incurred due to the camp's failure to open. Discovery is set to close in January 2003.
- Commonwealth v. LeBlanc (Middlesex Superior Court). This is a Massachusetts Commission Against Discrimination (MCAD) referral case in which the defendant landlord died during the MCAD proceedings. The case arose out of discriminatory acts targeting the victim's race and national origin. The case survived the defendant's death and service was made on the estate's executor. The case settled in May 2002, with defendant's estate compensating the victim for damages in the amount of \$28,000.00. There was no need for injunctive relief - the estate did not own or manage any other rental property and the landlord was deceased.
- Commonwealth v. Rolls Realty (Middlesex Superior Court). This MCAD referral discrimination case was based on familial status and lead paint discrimination. Final Judgment

by Consent was filed with the Court on January 25, 2002. Damages in the amount of \$10,000.00 were paid to the complainant and extensive injunctive relief was agreed to by the defendants.

- **Commonwealth v. Hunneman Company/Coldwell Banker and Milla Ivanova** (Worcester Superior Court). This was a housing discrimination case based on race. The real estate agent refused to sell to an African-American family and instead sold the house to a white family. The case settled in November 2001 with injunctive relief and \$28,000.00 for victims.

### STATISTICAL SUMMARY

#### DEFENSIVE LITIGATION

CASE	PRO TANTO		SETTLED NEW	
	AMOUNT	DEMAND	AMOUNT	MONEY SAVED*
Jones v. MHD	\$5,700	\$84,000	\$19,000	\$65,000
Welford v. MHD	\$120,000	\$325,000	\$50,000	\$205,000-\$275,000
LaFleur v. MHD	\$5,700	\$127,000**	\$30,000	\$97,000
Moore v. MHD	\$2,625	\$75,000**	\$29,000	\$46,000
Sjoberg v. MHD	\$17,625	\$130,000**	\$45,000	\$73,000
Mobil Oil v. Commonwealth	\$29,800	\$375,000-\$403,000	\$150,000	\$250,000
Getrost v. MHD	\$2,300	\$56,000	\$15,000	\$23,000
Tebaldi v. MHD	Not Available	\$65,280	\$27,000	\$29,000
Barrus v. MDC	\$8,100	\$53,000	\$28,000	\$40,000
Meadowland Corp. v. MDC	No formal taking	\$75,000	\$17,500	\$60,000
<b>TOTAL</b>			<b>\$410,500</b>	<b>\$888,000-\$958,000</b>

\* Dollar amounts are approximate due to variations in calculating amounts.

\*\* Exclusive of interest — approximately 14%.

## AFFIRMATIVE LITIGATION

## Non-Payment of Wages and Prevailing Wage Monies Recovered

FISCAL YEAR 2002	RESTITUTION
1st Quarter	\$106,934.12
2nd Quarter	\$53,909.15
3rd Quarter	\$37,591.66
4th Quarter	\$8,761.84
<b>TOTAL</b>	<b>\$207,196.77</b>

## Insurance and Unemployment Fraud Division

Restitution to Insurance Companies  
(moneys defrauded plus investigative costs) \$26,277.14

Costs of Prosecution  
(to be paid by the defendant to the Office of the Attorney General) \$15,000

## Trial Division

Massachusetts Highway Department v. City of Boston, Boston Redevelopment Authority, and MDA Park LLC settlement compensated the Commonwealth in the amount of \$167,000.

**Civil Rights**

CASE	COMPENSATION
Commonwealth v. LeBlanc	\$28,000
Commonwealth v. Rolls Realty	\$10,000
Commonwealth v. Hunneman	\$28,000
Commonwealth v. Livon Tanakejian, Bessette, Realty and Joanne Lyttle	\$5,000
<b>TOTAL</b>	<b>\$71,000</b>

**Consumer**

The Commonwealth entered into a letter agreement with Branford Hall Career Institute, settling on March 21, 2002, for \$24,000 (eight victims at \$3,000/each).

**Telephone Calls and Walk-ins**

CATEGORY	CALLS	WALK-INS	CONTACTS
Labor	3,836	306	4,142
Consumer	2,709	59	2,768
Misc.	1,274	1	1,275
<b>TOTAL</b>	<b>7,819</b>	<b>366</b>	<b>8,185</b>

## SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

Being Safe, Smart, and Savvy on the Internet (cross-bureau initiative combining the talents of staff who work on issues in Child Protection and High Tech) This training was targeted toward middle school students in an effort to educate students about the dangers that they may have heard about, but did not believe that they could be exposed to, as they "surf" the net. As part of the program, students were led through two scenarios which emphasized the potential dangers of the Internet. The first, "Victimization," focused on a student who was stalked online after she had corresponded with another "student" whom she had met in a Chat Room. The second, "Kids as Perpetrators of Internet Crimes," dealt with students who engage in illegal activities using the Internet. The training also assisted educators in responding to situations raised by new circumstances encountered with the increased use of the Internet. To date, over 4,500 students and parents have been reached in Winchendon, Westminster, Ashburnham, Princeton, Leominster, Harvard, Clinton, Westboro, Holden, Worcester, Millbury, Sutton, Southbridge, Northborough, and Palmer.

Focus on Elders (Elder Protection Project) This program was developed to educate seniors about issues that affect them. It focused on consumer fraud, problems with home improvement contractors, lottery and phone scams, financial exploitation, Internet safety, and elder abuse. The program highlighted the Office's Elder Protection Project and the Elder Hotline. CMAS staff spoke to elders in Sutton, Shrewsbury, Worcester, and Groton.

Rising Stars at Union Hill School Union Hill Elementary School in Worcester and the CMAS Division enjoy a special collaboration. Not only have staff read for different classes on Community Reading Day, Division Chief Jacobson initiated the Rising Stars Program for eight fifth grade students. Each week the students focused on a different Boston area landmark. They researched the site, the historical significance, and the cultural significance. In May 2002, the students traveled to Boston on the commuter line with a stop at the Duck Tour, pizza lunch at the Attorney General's Office, a tour of the State House, and other stops along the Freedom Trail.

Bullying, Harassment, and Hate Crimes This training is targeted toward middle school students to address incidents of bullying and harassment that not only affect all students but may lead to hate crimes and bias. Here, the students are taught to appreciate "protected classes" through small group discussions and working through case scenarios. This training has been utilized by several schools in response to incidents at their respective schools.

**Hate Crimes and Bias** CMAS staff collaborated with staff from the Community-Based Justice Bureau and created two PowerPoint trainings. The first, an intensive two-hour lecture is divided into three sections: 1) Understanding What Hate Crimes and Bias Incidents Actually Are; 2) Defining and Describing an Effective Law Enforcement Response — the Police, the District Attorney's Office, and the Office of the Attorney General; and 3) A Community's Response. (The third section has two formats, one specifically for the academic setting and the second for the community at large.) The second PowerPoint provides an overview of bias and hate crimes. It is an ideal introductory piece and has been proffered to many community boards in the Central Massachusetts area. Division Chief Jacobson and Assistant Attorney General Cooke are also members of the City Manager's Community Task Force on Hate Crimes and Bias.

**Shaken Baby Syndrome (SBS)** In 2001, there were five serious injuries, and one death of an infant from SBS in Central Massachusetts. In response, representatives from numerous state agencies, area community groups, law enforcement officers, and area hospitals joined together to form the Central Mass. Shaken Baby Syndrome Prevention Campaign. To date, the Campaign has sponsored Pediatric Grand Rounds at UMass Memorial Health Care, A Multi-disciplinary Approach to Shaken Baby Syndrome, with featured speaker Assistant U.S. Attorney Gerard T. Leone, and a daylong training, SBS Prevention: From Awareness to Action, with featured speakers Dr. Bob Reece, Dr. Mark Dias, Attorney Matt McCue of the Matty Eappen Foundation, and Dr. Holly Hackman from the Department of Public Health. Commissioners Weiworks from Office of Child Care Services and Spence from DSS also spoke. Special guests included SBS survivor Baby Caroline, a 16-month-old cherub, and Dr. Deborah Eappen. Two workshops were facilitated by Office of the Attorney General personnel, one on Forensic Interviewing (Leary, Parsons, and Dizel) and the second on Marketing and Building Awareness (Booth and Jacobson). A PowerPoint training, From Awareness to Action: The Central Massachusetts Shaken Baby Syndrome Prevention Campaign Presents – An Insight, has been developed and has been used as a training module for several continuing education programs.

**Fourth Children's Justice Act Conference: Protecting Children in a Changing Society** This biennial multi-disciplinary conference supports the goals and purpose of the Children's Justice Act (CJA) Grant: to develop, establish, and operate programs designed to improve the handling of child sexual abuse and exploitation cases, cases of suspected child abuse or neglect related to fatalities or near fatalities, and the investigation and prosecution of cases of child abuse. This major training activity supported by the Massachusetts CJA Task Force was co-sponsored by the Office of the Attorney General and co-chaired by Division Chief Jacobson. Nearly 500 professionals, including judges, lawyers, social workers, medical and mental health professionals,

law enforcement officials, educators, court personnel, and many others associated with the various phases of child abuse cases, were brought together. Not only did the conference offer participants the opportunity for an exchange of ideas, information, and viewpoints in order to encourage innovative responses to the plight of abused and neglected children, attendees had the opportunity to learn from the best educators. Two workshops focused on Office of the Attorney General initiatives: The Central Massachusetts SBS Prevention Campaign and Internet Safety. Eleven staff members from the Office of the Attorney General attended this conference.

## OUTREACH, EDUCATION, AND TRAINING

Internet CMAS staff regularly presents Internet safety programs, Being Safe, Smart, and Savvy on the Internet and The Parents Guide to the Internet, to students, parent groups, faculty members, community groups, and for programs sponsored by local public libraries.

Rising Stars at Union Hill School Division Chief Jacobson continued to read *To Kill a Mockingbird* to Ms. Flanagan's fifth grade homeroom class. She also has initiated the Rising Stars Program for eight students.

Our Commitment to the Community Staff from the CMAS Office have taken to the airwaves — cable access airwaves. With assistance from WCCA-Cable 13, Worcester's community access station, and staff from the Executive Bureau, numerous segments concerning the Office's work and outreach activities have been produced. Programs have focused on CMAS staff and their specific roles vis-à-vis the general public; consumer issues; Shaken Baby Syndrome and the Central Mass. SBS Prevention Campaign; the SCORE Program at Burncoat Senior High School; and Bias and Hate Crimes. This program has been well-received by area residents.

Representation on Community Groups Staff members participated in Community Reading Day at Union Hill Elementary School in Worcester. Staff continued throughout the school year to read to and tutor fifth grade students at Union Hill. Staff worked with several community groups, including the Worcester Chapter of Employers Against Domestic Violence, the Worcester Community Action Council's Project on Community Connections (Subcommittee on Education Issues), Montachusett Girl Scout Council, Inc., the Children's Medical Center Advisory Board (part of UMass Memorial Health Care), Worcester County Bar Association, Boston Inn of Court, St. Stephen Episcopal Church (Westborough), City Managers Community Task Force on Bias and Hate Crimes, Central Massachusetts Shaken Baby Syndrome Prevention Campaign, and DDS South Central Area Board.

**Speaking Engagements** Members of the CMAS staff spoke before the Worcester Business Development Corporation, the Central Massachusetts Employers Association, the Worcester-Fitchburg Building Trades Council, Centro Las Americas, Worcester Community Connections; and spoke in Ashburnham (Overlook Middle School), Princeton (Thomas Prince School), Northborough (Al-Hamra Academy), Worcester (schools, senior centers, senior complexes), Shrewsbury (Shrewsbury Senior Center), and Gardner (Gardner Sr. High School); and appeared on WCCA Channel 13.

**Office Representations** CMAS staff appeared on behalf of the Office at the Annual Labor Day Breakfast in Worcester and several Wachusett Area Chamber of Commerce events; participated in the Children's Justice Act (CJA) Task Force; co-chaired the Planning Committee for the CJA's biennial conferences, Children's Justice Act Conference, Community Reading Day in Worcester and Southborough, National Conference for Community Justice's 24th Annual Leadership Dinner — Leaders Taking Action for Inclusion (Worcester), A Prerequisite for Safe Schools: Protecting Students from Hate Crime and Harassment (Milford), Emergency Response to Terrorism (Leominster), and Viles Visiting Professorship Dinner and Lecture Getting to the HEART of the Matter, and served on the Regional Board for the South Central Office of the Department of Social Services.

## SOUTHEASTERN MASSACHUSETTS DIVISION

The Southeastern Massachusetts Division (SE MA), located at 105 William Street, New Bedford, is the newest regional office opened by Attorney General Thomas F. Reilly. This office is a cross-bureau initiative made up of lawyers, inspectors, mediators, and administrative staff committed to providing services offered by the Attorney General's Office regionally. The SE MA Division staff represents the Business and Labor Protection Bureau's Fair Labor and Business Practices Division, Public Protection Bureau's Civil Rights Division & Consumer Protection Division, and Government Bureau's Administrative Law Division and Trial Division, and handles a wide range of matters from various areas of the Attorney General's Office.

During Fiscal Year 2002, staff included Mary O'Neil, Division Chief; Cecile Byrne; Paul Gordon; Diane Lopes Flaherty; Anita Maietta; Stephen Marshalek; Timothy McGuire; Patricia Medeiros; Denise Nunes; Mario Paiva; and Patricia Tapper.

## SIGNIFICANT CASE SUMMARIES

The following provides an overview of cases undertaken by SE MA staff during Fiscal Year 2002.

### BUSINESS & LABOR PROTECTION

- Clambake Celebrations Overdue wage case. Non-payment of wage complaint received by employee who was employed as a shipping manager for employer from August 1992 to May 2000. Employee was laid off and not paid for work performed from April 27, 2000 to May 29, 2000. Employee was also owed four weeks vacation. Total owed \$3,240. Citation issued to Chatham mail-order seafood company for non-payment of wages, restitution \$888, penalty \$200. Case was scheduled for hearing on 8/10/01. Petitioner withdrew appeal and paid citation.
- My Kids and Company, Inc. Overdue wage case. Non-payment of wages to bus driver. Employer took deductions from employer's and employee's training expenses. Citation issued for non-payment of wages to one employee in the amount of \$685 for the time period of February 4, 2000 to May 5, 2000. Penalty in the amount of \$200. Employee worked as a bus driver for the Seekonk bus company and was not paid all wages owed. Petitioner withdrew appeal and paid citation in full.
- R. Bigelow and Company/Michael Bigelow Overdue wage case. Employee alleged she was owed wages for the period March 27, 2000 to April 1, 2000. Her rate of pay was \$9.50 per hour. She was owed for 23.5 hours of work or a gross amount of \$223.25. Both restitution and penalty have been paid.
- Scarpaci Waterproofing/Gataeno Scarpaci (DALA) Complainant was hired September 20, 2000 for waterproofing at \$10 an hour. Work commenced on September 20, 2000 and continued until September 26, 2000, for a total of 51 hours, and compensation owed was \$565. DALA upheld citation. Liens filed. Potential recovery \$565. Citation issued. Target, a retail store located in Rockland, cited for failure to make timely payment of wages to two employees for a total of \$565 in restitution and \$240 penalty. Also cited for failing to furnish records for inspection and cited \$1,000 penalty. Citation appealed but time to appeal had expired. Motion to dismiss for lack of jurisdiction filed. Liens issued.

- Zenone, Inc. This case involved failure to pay correct prevailing wage for work done by three Zenone employees on the Wastewater Pump Station in New Bedford in April and May 2000. Civil citation was issued and was appealed to DALA. Restitution was paid in full, along with a \$300 penalty. Citation issued to general construction company for failing to pay the prevailing wage rate to one employee in the amount of \$2,320.69 in restitution and \$789 in penalty. Employee was performing work on the New Bedford Wastewater Pump Station and was performing the work of an operator and laborer, but was paid only the laborer rate. Hearing held, decision to uphold citation. Decision appealed to Superior Court. Answer filed. Oral arguments in March 2003. Superior Court decision upholding DALA decision.

## GOVERNMENT

- Adams v. Department of Social Services (Bristol County Superior Court) Judicial Review 30A — Abuse and Neglect. Judge Murphy allowed Plaintiff's Motion for Judgment on the Pleadings as to neglect of the three children in question and denied as to abuse of the daughter. Decision of DSS Vacated as to the neglect of three children by plaintiff and Affirmed as to abuse of minor child.
- Haley v. Registrar of Motor Vehicles (Barnstable County Superior Court) Judicial Review 30A — Motor Vehicle License. The plaintiff was convicted in September 1991 of OUI. In March 2001, plaintiff was again convicted of OUI. The district court treated the second offense as the first offense because the second offense occurred after six years but within 10 years, and therefore, the plaintiff was eligible for the first offenders program. The Registry of Motor Vehicles (RMV), however, treated the second offense as the second offense and suspended the plaintiff's license for two years. The plaintiff appealed the two-year suspension directly to the Superior Court without first appealing to the Board of Appeal on Motor Vehicle Liability, Policies and Bonds. A Motion to Dismiss was filed for failure to exhaust administrative remedies. Dismissed by the Court.
- On Island Gas, Inc., et al. v. Underground Storage Tank Petroleum Product Clean-up Administrative Review Board, et al. (Nantucket County Superior Court) Judicial Review 30A — Underground Storage Tank. Defendant's Motion for Judgment on the Pleadings Allowed.

- Marceline v. Barnstable County Retirement Association, et al. (Barnstable County Superior Court) Judicial Review 30A — Retirement. Motion to Dismiss Allowed.
- Duque v. Department of Social Services (Barnstable County Superior Court) Judicial Review 30A — Abuse and Neglect. Claims under FIPA, the Privacy Act, arising from DSS's substantiation of abuse complaint against plaintiff. The plaintiff sought reversal of a decision that substantiated an abuse and neglect allegation against him. He also contends that the Department violated the Public Records Act by refusing to release copies of his records to him. Dismissed by the Court.
- Wetherell v. Board of Appeal on Motor Vehicle Liability Policies & Bonds (Bristol County Superior Court) Judicial Review 30A — Motor Vehicle License. Dismissed. Voluntary Stipulation of Dismissal filed as plaintiff had received a hardship license.
- Ulianelli v. Board of Appeal on Motor Vehicle Liability Policies & Bonds (Bristol County Superior Court) Judicial Review 30A Motor – Vehicle License. Appeal from a four-year suspension of license of plaintiff deemed a "habitual traffic offender." Dismissed. Voluntary Stipulation of Dismissal filed as plaintiff had received a hardship license.
- Branco v. Department of Revenue (Bristol County Superior Court) Judicial Review 30A — Civil Service. Appeal from Civil Service Commission's decision affirming Department of Revenue's determination of the plaintiff. Dismissed by the Court.
- Vaudo and Joe's Lobster Mart, Inc. v. Howard K. Koh, M.D., Massachusetts Department of Public Health, et al. (Barnstable County Superior Court) Complainant sought a Temporary Restraining Order and a Preliminary Injunction challenged suspension of license to sell shell stock. Remanded to DALA. Dismissed by the Court with prejudice and without costs.
- Corliss v. City of Fall River (Land Court) Trial/Real Estate — case involving Native American rights. Decision and Judgment: Dismissed for lack of standing in plaintiff.

## CRIMINAL

- Rogers v. Commonwealth (Bristol County Superior Court) Allegation that a state representative and New Bedford city councilor disseminated material harmful to a minor by playing an adult video to a 16-year-old boy. Defendant found not guilty.

## PUBLIC PROTECTION

- Commonwealth v. Riverview Meadows I, Limited Partnership, d/b/a Riverview Meadows Corporation, Douglas King Builders, and Douglas A. King Management Corporation (Bristol County Superior Court) Unlawful discrimination and intimidation in the rental of housing on the basis of rental assistance. Unlawful discrimination in the terms and conditions of rental housing. Stipulation of Dismissal entered. Dismissed by Agreement. Case to remain pending between Defendant King and Victim Dabreu.
- Bruder v. Commonwealth (Bristol County Superior Court) SDP cases are handled by a Special Assistant Attorney General (SAAG). Department of Correction (DOC) is SAAG on these matters. Forwarded to Department of Correction, General Counsel.
- Kyle Manzi v. Commonwealth (Barnstable County Superior Court) SDP Petition for Discharge received. Forwarded to Department of Correction, General Counsel.

## STATISTICAL SUMMARY

### BUSINESS AND LABOR PROTECTION

QUARTER	CALLS	NON-PAYMENT & PREVAILING WAGE COMPLAINTS		TOTAL RESTITUTION AND PENALTIES/FINES
		OPENED	CLOSED	
1	1,161	117	171	\$39,166.64
2	979	161	127	\$49,703.57
3	1,511	179	104	\$41,355.02
4	1,450	133	131	\$27,529.62
<b>TOTAL</b>	<b>5,101</b>	<b>590</b>	<b>533</b>	<b>\$157,754.85</b>

## GOVERNMENT

	CASES ASSIGNED	CASES CLOSED	CASES PENDING
Administrative Law	27	10	24
Trial	11	0	9

## PUBLIC PROTECTION

CIVIL RIGHTS	OPENED	CLOSED	PENDING
Cases	1	1	0
Complaints	34	30	4

CONSUMER PROTECTION	TOTAL
Calls	2,081
Walk-ins	374
Complaint Forms Received*	141
Complaint Forms Sent	368
Information Sent	340
Complaints Closed	485
Total Money Saved for SE MA Consumers	\$39,829.70

\*Began tracking in November 2001

## SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

The Southeastern Massachusetts (SE MA) Office of the Attorney General is committed to the community it serves. In Fiscal Year 2002, staff in the SE MA Office made it a priority to establish a connection with the public. It produced five local cable shows on various subjects which will air at various times. The first show was titled *Our Commitment to the Community* and aired on the New Bedford Cable Access Channel. Staff also appeared on *It Takes a Village*, a cable show created by the New Bedford Public School cable access station, the Portuguese Channel's Fall River cable access show, and the Central Massachusetts Office of the Attorney General's local cable access show.

Division staff also stayed connected with the community by actively participating on various boards and committees: the New Bedford Women's Center and Bristol County District Attorney's Office's Domestic Violence Task Forces; Safe Harbors for Our Schools; New Bedford Mayor's Drug Task Force; and the United Way of Southeastern Massachusetts Citizens Review Board.

In addition, staff enthusiastically collected food and toys for the local Salvation Army during the holiday season. Staff also attended the Annual Feast of the Blessed Sacrament in New Bedford, along with Attorney General Reilly, and marched in the parade. One staff member and one student intern enrolled in the Citizens Police Academy and successfully completed the program.

Four successful internship programs were completed in Fiscal Year 2002. Tara Quirk, New Bedford High School teacher, began with an eight-week externship. Julie Margetta, a promising law school student, Robert Massoud and Tiffany Normandin, New Bedford High School seniors, assisted with office duties and were provided an overview of the Attorney General's Office.

At the New Bedford Prevention Partnership (NBPP), an overview of the Office was presented by SE MA staff. NBPP is the umbrella group for the neighborhood groups in the New Bedford area. Staff maintain an active presence at both the NBPP (mentoring, Board of Directors, Paint Your Heart Out, Safe Night) and many of the local neighborhood meetings. An intern from the SE MA Office appeared in NBPP's Reality About Drugs campaign.

## OUTREACH, EDUCATION, AND TRAINING

Elder outreach in Fiscal Year 2002 included regular visits to the Acushnet Council on Aging (COA) and presentations made at the COAs in Falmouth, Rochester, Taunton, Swansea, New Bedford, Wareham,

Fall River, and Fairhaven. Special presentations at the Niagara-Maplewood Senior Center in Fall River, Coastline Elderly Services Foster Grandparent Program, Massachusetts Council on Aging Association, and the National Association of Retired Federal Employees highlight the strong commitment the SE MA staff has to serving elders.

Children's issues are a top priority of the Attorney General. To that end, SE MA staff conducted presentations on Internet safety to over 500 students and parents of Morton Middle School, Kuss Middle School, Talbot Middle School, and Henry Lord Middle School in Fall River; Hastings Middle School in Fairhaven; Ford Middle School in Acushnet; Holy Family/Holy Name School of New Bedford; St. Mary's School of New Bedford; and New Directions.

Safe Harbors for Our Schools, a grant-funded program, held its summit on February 2, 2002. SE MA staff participated in this community outreach project and continues to provide support to Southeastern Massachusetts students.

Significant progress was made in Fiscal Year 2002 in assisting Southeastern Massachusetts area consumers as staff worked closely with the Local Consumer Programs (LCPs) in Bristol, Plymouth, Barnstable, and Dukes counties. Staff attended regular monthly meetings with the LCPs and with the Office of Consumer Affairs and Business Regulations (OCABR), as well as taking part in the annual Symposium for Consumer Advocates at the Federal Reserve Bank. In addition, the regional office hosted Attorney General Reilly and Senator Montigny as they announced a new program, titled NSTAR Electric's Enhanced Outreach Program, launched by NSTAR to aid consumers in paying their electric bills in the Bristol County area.

New Bedford's Community Economic Development Council awarded SE MA staff and FLBP Inspector Byrne with Certificates of Appreciation for Outstanding Community Service at its Annual "When Life Gives You Lemons" Awards Dinner. Staff also coordinated an informative Conflicts of Interest Conference for Southeastern Massachusetts municipal officials, co-sponsored by the State Ethics Commission.

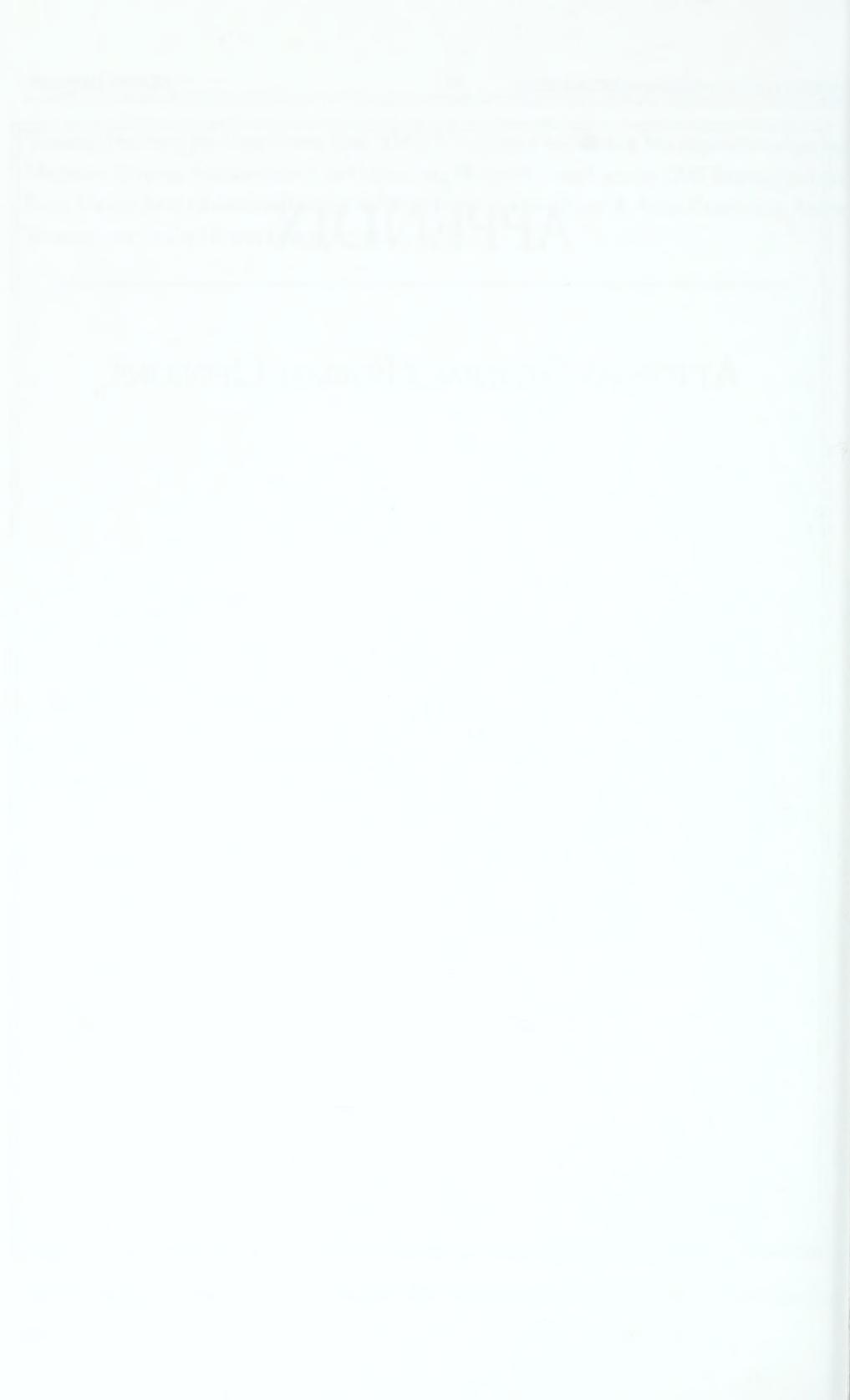
Officewide initiatives such as the Diversity Committee, Web site Committee, Children's Protection Project, Employee Benefits Committee, and Correspondence Committee continued to see participation from SE MA staff in Fiscal Year 2002. In an effort to sharpen skills and remain lifelong learners, the following trainings and conferences were attended: Sexual Harassment Training; Westlaw Training; Manufactured Housing Community Law for Local Offices; CPAD Training and Comprehensive Orientation; Killer Depos; Reid Investigator Training; The Media & You; MS Excel Training; Editing & Writing; Business Records Exception Training; PowerPoint Training; Public Records Protocols; Deposition

Training; Handling the High Profile Case; EMDO Training; Handwriting Techniques/Investigative; Mediation Training; Administrative Law Orientation; Hotline Services Training; CMS Training; Just the Facts, Ma'am; Juror Questions Training; 4.2 Rule Training; Elder Fraud & Abuse Conference; Access Training; and the Civil Rights Division's training series.

# APPENDIX

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## ATTORNEY GENERAL'S FORMAL OPINIONS





THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL  
ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108-1698

THOMAS F. REILLY  
ATTORNEY GENERAL

No. 01/02-1

October 11, 2001

Honorable William Francis Galvin  
Secretary of the Commonwealth  
State House  
Boston, MA 02133

**Re: Central Voter Registry**

Dear Secretary Galvin:

You have requested an opinion regarding the status of certain information contained in the Central Voter Registry ("Central Registry"), a computer database created and maintained by the Office of the Secretary of the Commonwealth pursuant to G.L. c. 51, § 47C (2001 Supp.) ("Section 47C").<sup>1</sup> This statute requires that your office make available to state party committees, statewide candidate committees, and state ballot question committees (collectively, "statewide committees") the names and addresses of registered voters contained in the Central Registry. You have asked whether your office is also obligated to provide such entities with the other voter information contained in the Central Registry ("collectively, voter information"). For the following reasons, I conclude that your office is obligated under the public records law to provide the public (including statewide committees) with access to voter information contained in the Central Registry.

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<sup>1</sup> Section 47C provides in relevant part as follows:

Subject to appropriation, the state secretary shall maintain a central registry of voters which shall contain, if provided by the registrars, the names, addresses and effective dates of registration of all registered voters in the commonwealth . . . , and shall adopt regulations governing the operation of said central registry. The names and addresses contained in said central registry shall not be a matter of public record; provided however, that they shall be available to state party committees, statewide candidate committees, state ballot question committees, the jury commissioner, adjutant general and any other individual, agency or entity that the state secretary shall designate by regulation consistent with the purposes of this section, at a fair and reasonable cost not to exceed the cost of printing or preparing computer readable documents.

Section 47C specifies that the Central Registry shall contain the names, addresses, and effective dates of registration of all registered voters in the Commonwealth. Id.<sup>2</sup> The municipal registrars enter and update this information in the Central Registry from the annual registers of qualified voters residing in their respective cities and towns, G.L. c. 51, §§ 1, 4(a), 37; and the registrars revise the annual registers to correct any errors. Id., § 38. In addition to compiling a list of active voters entered on the annual registers, the registrars maintain a list of inactive voters, restoring to the active list any inactive voters who vote in an election. G.L. c. 51, § 37A.<sup>3</sup>

Pursuant to Section 47C, your office has adopted regulations governing the use of the Central Registry, and these regulations call for the registrars to enter into the Central Registry all information required to maintain and update the annual registers. 950 C.M.R. § 58.03. Such information includes, but is not limited to, a voter's party enrollment;<sup>4</sup> the name, address, and date of inactivity of all voters designated as inactive; the number of inactive voters who were sent confirmation mailings under G.L. c. 51, § 37, and the number of responses thereto. Id. at § 58.03(1). The regulations also call for the registrars to enter into the Central Registry all information required under G.L. c. 51, § 4, if collected by the municipality.<sup>5</sup> Id. at § 58.03(3). As noted in the regulations, the purpose of the Central Registry is to maintain a state-wide list of all registered voters in the Commonwealth and to maintain, if collected by the municipality, the information called for by G.L. c. 51, § 4. 950 C.M.R. § 58.01.

By its terms, Section 47C mandates that your office make available to certain designated persons the names and addresses of registered voters contained in the Central Registry. The statute provides in relevant part as follows:

The names and addresses contained in said central registry shall not be a matter of public record; provided however, that they shall be available to state party committees, statewide candidate committees, state ballot question committees, the jury commissioner, adjutant general and any other individual, agency or entity that the state secretary shall designate by regulation consistent with the purposes of this section. . .

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<sup>2</sup> In part, the Central Registry implements various requirements imposed on states with respect to the administration of a voter registration system under the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg *et seq.*, such as procedures for removal of registrants from the voting rolls due to changed residence. See Association of Community Org. for Reform Now v. Miller, 912 F. Supp. 976, 979 (W.D. Mich. 1995). The primary purpose of the National Act is to increase the number of eligible citizens who register to vote in elections for federal office. 42 U.S.C. § 1973gg(a)(1).

<sup>3</sup> In compiling the several lists, registrars may have the assistance of the police department, assessors and other suitable officers or employees of the city or town in securing the information needed. G.L. c. 51, § 14A.

<sup>4</sup> Registrars track a voter's party because only those persons enrolled in a party are allowed to vote in that party's primary. G.L. c. 51, § 55; G.L. c. 53, § 37; Metros v. Secretary of the Commonwealth, 396 Mass. 156, 157 n. 4 (1985).

<sup>5</sup>The regulations also call for the registrars to remove from the Central Registry all voters who are no longer registered to vote in their community. Id. at § 58.03(4).

G.L. c. 51, § 47C. The regulations promulgated by your office do not add any other persons or entities to those listed in Section 47C for purpose of access to registered voters' names and addresses.

Your specific inquiry is whether your office is also obligated to make available to statewide committees the voter information contained in the Central Registry, such as a voter's party enrollment. I conclude that your office is required to make such voter information available to statewide committees and other persons under the public records law.

**A. Section 47C Does Not Specifically Or By Necessary Implication Exempt  
Voter Information From Disclosure Under the Public Records Law.**

Public records are broadly defined by statute to include documentary materials or data, regardless of physical form or characteristics, made or received by officers and employees of any agency of the Commonwealth, unless falling within specified statutory exemptions. G.L. c. 4, § 7 (26). As so defined, public records are subject to mandatory disclosure upon request, unless such records fall within a statutory exemption to that law. G.L. c. 66, § 10(b). In applying the public records law, there is a statutory presumption that the record sought is public, and the custodian of the document has the burden of proving with specificity the exemption which applies. G.L. c. 66, § 10(c); Globe Newspaper Co. v. Police Commissioner of Boston, 419 Mass. 852, 857 (1995); District Attorney for Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995). Given this statutory presumption, the statutory exemptions from the public records law are strictly and narrowly construed. Attorney General v. Assistant Commissioner of Real Prop. Department of Boston, 380 Mass. 623, 625 (1980). In addition, the existence of some exempt information in a document will not justify withholding the entire document, because the right of access extends to any nonexempt portion of a public record where the exempt portion can be redacted. G.L. c. 66, § 10(a) (permitting inspection of any public record or any segregable portion of a record which is an independent public record); Globe Newspaper Co. v. Police Commissioner of Boston, 419 Mass. at 858.

Although you acknowledge that voter information contained in the Central Registry is subject to the public records law, you have invoked the statutory exemption for records specifically or by necessary implication exempted from disclosure by statute, G.L. c. 4, § 7, cl. twenty-sixth (a), because Section 47C exempts the names and addresses contained in the Central Registry from the public records law. I conclude that this statutory exemption does not apply to voter information.

Section 47C requires that the Central Registry contain, at a minimum, registered voters' names, addresses, and effective dates of registration. The regulations promulgated by your office also require the inclusion of additional information in the Central Registry. In contrast, the exemption from the public records law in Section 47C refers solely to the "names and addresses" contained in the Central Registry. In order to construe this statutory exemption narrowly, one must give effect to this distinction. Given

the plain language at issue, the statutory reference to "names and addresses" in Section 47C does not encompass the voter's date of registration or any other voter information contained in the Central Registry, such as the voter's party enrollment. Accordingly, a narrow reading of this exemption leads to the conclusion that only the names and addresses contained in the Central Registry are exempt from disclosure as public records, and that voter information constitutes public records subject to disclosure to the general public. The statutory exemption for voters' "names and addresses" contained in the Central Registry must be considered in the context of Section 47C as a whole, in order to render the statute a consistent and harmonious provision capable of effectuating the Legislature's presumed intent. Flemings v. Contributory Retirement Appeal Bd., 431 Mass. 374, 376 (2000); see also 1979/80 Op. Attorney Gen. No. 3, Rep. A.G., P.D. No. 12 at 98, 101 (1979). While Section 47C exempts voters' "names and addresses" from the public records law, the statute contemplates that the Central Registry will include other information, such as a voter's effective date of registration. The Legislature declined to include any such voter information in the statutory exemption from the public records law for "names and addresses" contained in the Central Registry. Given that statutory exemptions to the public records law must be construed narrowly, the Legislature's decision to limit the exemption under Section 47C to names and addresses evinces a clear intent to allow all persons (including statewide committees) access to the voter information contained in the Central Registry, while providing only statewide committees with access to voters' names and addresses. See AT&T v. Automatic Sprinkler Appeals Bd., 52 Mass. App. Ct. 11, 14 (2001) (court's interpretation of G.L. c. 148, § 26A 2 is consistent with clear overarching intent of statute and with rule of statutory construction that exemptions be construed narrowly).

If the Legislature had intended to include voter information within the exemption from the public records law under Section 47C, it could easily have broadened the scope of the exemption from voters' "names and addresses," as the statute is written, to all voter information contained in the Central Registry. The Legislature declined to do so, thereby supporting the conclusion that voter information contained in the Central Registry is subject to the public records law.<sup>6</sup>

Nor is there reason to conclude that because Section 47C allows only statewide committees to have access to voters' names and addresses contained in the Central Registry, all persons (including statewide committees) do not have access under the public records law to any remaining information contained in the Central Registry. Where a provision allows specified entities access to one category of information, it does not necessarily follow that either the public or the specified entities lack access to other, related information. See, e.g., Attorney General v. Collector of Lynn, 377 Mass. 151, 53-54.

Finally, in applying exemptions to the public records law, one must also consider whether the information in question is otherwise available to the public. See Globe Newspaper Co. v. Police

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<sup>6</sup> If voter information were included in the exemption under Section 47C, statewide committees would be entitled to receive such information, as well as names and addresses.

Commissioner of Boston, 419 Mass. at 858; Attorney General v. Collector of Lynn, 377 Mass. at 158 (public availability of information reduces any expectation of privacy under exemption for disclosure that constitutes an unwarranted invasion of personal privacy, G.L. c. 4, § 7, twenty-sixth (c)). Here, substantially the same voter information is available to the public from other sources, namely the registrars of each city and town, each of whom enters and updates the voter information in the Central Registry. See G.L. c. 51, § 40 (registrars' records shall at suitable times be open to public inspection); § 41 (registrars shall preserve all documents in their custody relative to listing and registration, for two years after the dates thereof, provided that affidavits of registration shall be preserved and shall be deemed to be public records); §55 (voting lists shall be printed and made available to any person, at a reasonable fee not to exceed the cost of printing the list, upon request).<sup>7</sup> The public availability of such voter information from the registrars additionally supports the conclusion that such information is not encompassed by the exemption from the public records law for voters' "names and addresses" under Section 47C.

**B. Section 47C Requires that Your Office Provide Persons with Access to Voter Information, Regardless of Other Means of Access.**

Given that the Central Registry is a database, and that the registrars enter the voter information therein, you have raised several issues as to application of the public records law to requests received by your office for voter information. You have asserted that your office is not a custodian of such voter information for purposes of the public records law, because the registrars of each city and town enter and update such information in the Central Registry and are in a better position than your office to provide access to such information. On this point, Section 47C calls for your office to "maintain" the Central Registry and states that voters' names and addresses contained therein "shall be available" to statewide committees.<sup>8</sup> The regulations adopted by your office governing the use of the Central Registry require the registrars to enter a voter's party and other information in the Central Registry. 950 C.M.R. § 58.03. The necessary implication of these provisions is that your office, which the Legislature has vested with control over the Central Registry, is the state entity responsible for making voter information available under the public records law, even though registrars from the cities and towns input the information into the Central Registry and may also have the ability or obligation to disclose any such information to which they have access. See G.L. c. 4, § 7, cl. 26 (defining "public records" as records "made or received"

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<sup>7</sup> See also 42 U.S.C. § 1973gg-6(l)(1) (each state shall maintain for at least two years and shall make available for public inspection all records (with certain exceptions) concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters).

<sup>8</sup> Initially, Section 47C authorized your office, by agreement, to designate another state agency to manage the central registry, subject to control and supervision by your office. St. 1993, c. 475, § 22. The Legislature then deleted that provision. St. 1996, c. 454, § 14.

by officers or employees of state agencies or political subdivisions); G.L. c. 66, § 10 (applying public records law to "every person having custody of any public record"); 950 C.M.R. § 32.03 (defining the term "custodian" for purposes of public records law as "the governmental officer or employee who in the normal course of his or her duties has access to or control of public records").

Your office is required under the public records law to provide all persons with access to voter information contained in the Central Registry, regardless of any independent obligation of the registrars for information pertaining to voters in their respective city or town, given your office's access to and control of such information under Section 47C. G.L. c. 66, § 10. The public records law thus applies to voter information contained in the Central Registry.

You have noted, as a potential barrier to providing such access to voter information, that there is some variation as to the level of information entered by registrars in different cities and towns. Section 47C provides in relevant part that the Secretary shall maintain the Central Registry, "which shall contain, if provided by the registrars, the names, addresses and effective dates of registration of all registered voters in the commonwealth . . ." This provision makes clear that your office is charged with maintaining the Central Registry, while the registrars are called upon to enter and update the voter information therein, and that your office would not be in a position to provide such information for a particular voter if the registrars had not entered it in the Central Registry. However, if the registrars have entered particular voter information in the Central Registry, your office is required to provide all persons with access, upon request, to that information.

You have indicated that the Central Registry contains a program to provide the names and addresses of registered voters, but does not have a similar function to provide "voter history" information contained therein, except by searching in a specific city or town as of a specific election date, so that "voter history" information can only be provided for one city or town at a time, through a "structured query language process." As a result, even though "voter history" information is contained as computer data in the Central Registry, you have stated that it would require a programming effort to provide access to such information from the Central Registry. Where, as here, existing information is subject to the public records law, ease of access is not a basis for a records custodian to decline access to such information on request. Your letter did not specify the particular voter information sought by various statewide committees, and it is not clear whether statewide committees have requested the complete "voter history," or instead seek particular categories of information required to be included in the Central Registry under Section 47C or the regulations. Any further issues as to public access to voter information may depend upon the nature of the information sought and the manner in which it is kept. I note that 950 C.M.R. § 32.05(4) provides in pertinent part that although "[a]ny person seeking access to a public record or any portion thereof shall provide a reasonable description of the requested record to the custodian so that he or she can identify and locate it promptly," "[a] custodian's superior knowledge of

the contents of a governmental entity's files shall be used to assist in promptly complying with the request."

For the foregoing reasons, I conclude that your office is obligated to provide all persons (including statewide committees) with access, upon request, to voter information contained in the Central Registry under the public records law, and also to provide statewide committees with access to voters' names and addresses under Section 47C.

Sincerely,

A handwritten signature in black ink, appearing to read "THOMAS F. REILLY".

Thomas F. Reilly



